

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Flores, Chair
Senator Joyner, Vice Chair

MEETING DATE: Monday, February 20, 2012
TIME: 10:30 a.m.—1:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Flores, Chair; Senator Joyner, Vice Chair; Senators Braynon, Gardiner, Richter, Simmons, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 646 Regulated Industries / Wise (Similar CS/H 715)	Self-service Storage Facilities; Revising notice requirements relating to enforcing an owner's lien; authorizing notice by e-mail or first-class mail with a certificate of mailing; providing requirements for e-mail notice; revising provisions relating to when notice given is presumed delivered; requiring rental agreements and applications for rental agreements to contain a provision for the disclosure of the applicant's membership in the uniformed services, etc.	RI 01/19/2012 Fav/CS JU 02/20/2012
2	CS/SB 1874 Children, Families, and Elder Affairs / Wise (Similar CS/H 1163)	Adoption; Exempting adoption proceedings initiated under chapter 39, F.S., from a requirement for a search of the Florida Putative Father Registry; providing that in a termination of parental rights proceeding if a required inquiry that identifies a father who has been adjudicated by a court as the father of the minor child before the date a petition for termination of parental rights is filed the inquiry must terminate at that point; providing guidelines for a court considering a reasonable attorney fee associated with adoption services; restricting who may place a paid advertisement or paid listing of the person's telephone number offering certain adoption services, etc.	CF 01/31/2012 Fav/CS JU 02/20/2012 BC

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Judiciary

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 808 Education Pre-K - 12 / Norman (Similar CS/H 431)	Joint Use of Public School Facilities; Encouraging each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on school property, increase the number of joint-use agreements, and develop and adopt policies and procedures for an appeal process when negotiations for a joint-use agreement fail; providing immunity from liability for a district school board that adopts public access policies or enters into a joint-use agreement except in instances of gross negligence or intentional misconduct, etc.	ED 02/06/2012 Fav/CS JU 02/20/2012 BC
4	CS/SJR 1056 Military Affairs, Space, and Domestic Security / Norman (Similar CS/HJR 93, Compare CS/H 95, Link CS/S 1058)	Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder; Proposing an amendment to the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date, etc.	MS 01/26/2012 Fav/CS CA 02/06/2012 Favorable JU 02/20/2012 BC
5	CS/SB 1058 Military Affairs, Space, and Domestic Security / Norman (Similar CS/H 95, Compare CS/HJR 93, Link CS/SJR 1056)	Homestead Property Tax Exemptions; Citing this act as the "Fallen Heroes Family Tax Relief Act"; exempting from taxation the homestead property of the surviving spouse of a first responder who dies in the line of duty; providing definitions for "first responder" and "line of duty"; providing construction with respect to the applicable tax roll and the date of death, etc.	MS 01/26/2012 Fav/CS CA 02/06/2012 Favorable JU 02/20/2012 BC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SJR 1508 Montford (Similar CS/HJR 931)	Board of Governors/Student Body President; Proposing an amendment to the State Constitution to replace the president of the Florida Student Association or the equivalent as a member of the Statewide Board of Governors with the student body president of a state university, etc.	HE 02/09/2012 Favorable JU 02/20/2012 EE RC
7	CS/SB 1868 Community Affairs / Gardiner	Federal Grants; Requiring a county, municipality, or special district to identify and disclose the costs of a federally funded project which will not be funded by the federal grant; requiring the entity to disclose a plan for funding the project after the depletion of federal funds; authorizing a person to file a civil action to enforce the disclosure of unfunded, long-term costs of a county, municipality, or special district project funded by a federal grant; providing an exception for federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds, etc.	CA 01/30/2012 Fav/CS JU 02/20/2012 BC
8	CS/SB 680 Regulated Industries / Bogdanoff (Similar CS/CS/H 319, Compare H 1345, S 76)	Residential Properties; Exempting certain elevators from specific code update requirements; providing requirements for condominiums created within condominium parcels; providing for the establishment of primary condominium and secondary condominium units; revising the restriction on officers and full-time employees of the ombudsman from engaging in other businesses or professions; revising the time limitation for classification as a bulk assignee or bulk buyer, etc.	RI 01/26/2012 Fav/CS JU 02/20/2012 BC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 1276 Criminal Justice / Latvala (Identical CS/CS/H 729)	Hiring, Leasing, or Obtaining Personal Property or Equipment With the Intent to Defraud; Providing that in a prosecution, failing to redeliver property or equipment within a specified time after receiving the demand for return from a courier service with tracking capability or by certified mail, return receipt requested, or within a specified time after delivery by the courier service or return receipt from the certified mailing of the demand for return, is prima facie evidence of abandonment or refusal to redeliver the property or equipment; providing that notice mailed by delivery by courier with tracking capability to the address given by the renter at the time of the rental is sufficient and equivalent to notice having been received by the renter, if the notice is returned undelivered; providing that possession of personal property or equipment by a third party does not alleviate the lessee of his or her obligation to return the personal property or equipment according to the terms stated in the contract, etc.	CJ 01/25/2012 Fav/CS JU 02/20/2012 BI
10	SB 1890 Latvala (Compare CS/H 213, H 1149)	Mortgage Foreclosure Proceedings; Citing this act as the "Florida Fair Foreclosure Act"; specifying the limitation period for initiating an action to collect a deficiency following the foreclosure of certain dwellings; requiring certain individuals to execute instruments acknowledging the satisfaction of liens and judgments and to provide a certified copy of the recorded satisfaction to the person who made the full payment; requiring a foreclosing party in certain mortgage foreclosure actions to provide notice to the mortgagors and tenants relating to their rights and obligations, etc.	JU 02/20/2012 BI
11	SB 1686 Fasano (Similar CS/H 1123)	Effects of Crimes; Providing that a court may not make an equitable distribution of property in a dissolution of marriage to a party convicted of certain offenses concerning the other party; prohibiting persons convicted of specified crimes after a marriage from receiving alimony; providing that a parent who commits specified offenses against a minor child shall lose all right to the intestate succession in the child's estate and all right to administer the estate; providing for distribution of that share of the estate, etc.	JU 02/20/2012 CJ

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 862 Simmons (Identical H 609)	Wage Protection for Employees; Prohibiting a county, municipality, or political subdivision from adopting or maintaining in effect a law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft; preempting such activities to the state; defining the term "wage theft", etc. CA 01/23/2012 Favorable JU 02/20/2012 GO	

Other Related Meeting Documents

notice requirements for the sale of the personal property of the tenant who fails to pay moneys due to the owner.²

Section 83.803(6), F.S., defines the term “last known address” to mean the “address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery or certified mail in a subsequent written notice of a change of address.”

Section 83.806(1), F.S., requires that the tenant be notified of an enforcement of a lien. The notice must be in writing and must be delivered in person or by certified mail³ to the tenant’s last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. The notice must include:

- An itemized statement of the owner’s claim;
- A description of the personal property;
- A demand for payment within a specified time, not less than 14 days after delivery of the notice;
- A conspicuous statement that unless the claim is paid within the time stated in the notice the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.⁴

Under s. 83.806(3), F.S., any notice given in the enforcement action is presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.

In the event of a sale, s. 83.806(8), F.S., requires the owner to provide notice of any balance remaining to the tenant either in person or by certified mail to the last known address of the tenant. If other lienholders are involved, the owner must also provide a notice of the amount of the sale proceeds to the secured lienholders in person or by certified mail.⁵

The Servicemembers Civil Relief Act protects military personnel called to active duty from termination of storage leases under prescribed circumstances. Under that act:

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.⁶

² Section 83.806, F.S.

³ Certified mail allows the owner to find out when their item was delivered or when delivery was attempted. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

⁴ Section 83.806(2), F.S.

⁵ Section 83.806(8), F.S.

⁶ 50 App. U.S.C. s. 537(a)(1).

A person is subject to penalties for a misdemeanor for violating the act.⁷

III. Effect of Proposed Changes:

Section 1. amends s. 83.803(6), F.S., to expand the definition of last known address to include the street address, post office box, or e-mail address provided by the tenant in a rental agreement or in a subsequent written change of address notice provided by first-class mail or e-mail. The bill deletes a provision which may have required a tenant to provide a new address to an owner by certified mail.

Section 2. amends s. 83.806(1), F.S., to remove the requirement that a tenant be notified of the owner's claim by certified mail. The bill allows written notice of a pending sale of property to be delivered in person, by e-mail, or by first-class mail along with a certificate of mailing. Specifically, if the owner notifies the tenant by e-mail, a response, return receipt, or delivery confirmation from the tenant's last known e-mail address is required for the notice to be effective. If a response, return receipt, or delivery confirmation is not received, the owner must send notice of the sale to the tenant's last known address by first-class mail⁸ along with a certificate of mailing,⁹ before proceeding with the sale.

The bill amends s. 83.806(3), F.S., to delete a requirement that a notice sent by mail must be "registered" in order for the notice to be presumed delivered when deposited with the U.S. Postal Service.¹⁰ Accordingly, any notice sent by mail, registered or not, is presumed delivered when deposited with the U.S. Postal Service.

The bill amends s. 83.806(8), F.S., to permit the owner to notify the tenant or secured lienholders of any balance remaining from the proceeds of a sale of property by first-class mail along with a certificate of mailing, and removes the reference to certified mail.

Section 3. amends s. 83.808(8), F.S., to require contract rental agreements or applications for a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).¹¹ This requirement may help servicemembers avoid a foreclosure on their property in a storage unit during a period of military service.

Section 4. provides an effective date of July 1, 2012.

⁷ 50 App. U.S.C. s. 537(c).

⁸ First-class mail provides the sender with delivery in three days or less and can be combined with additional services to confirm delivery. United States Postal Service website, available at <https://www.usps.com/send/first-class.htm> (last visited February 15, 2012).

⁹ A certificate of mailing provides the owner evidence of when the item was mailed with the date the mail was accepted by the United States Postal Service. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

¹⁰ Registered mail provides the sender the opportunity to insure the item for up to \$25,000. United States Postal Service website, available at <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited February 15, 2012).

¹¹ The term "uniformed services" means—(A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service. 10 U.S.C. s. 101(a)(5).

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:

The bill may lower the cost for owners of self-storage facilities with respect to providing the required notice to tenants and secured lienholders under the Florida Self-storage Facility Act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define the term “certificate of mailing.” The Legislature may wish to amend the bill to define a “certificate of mailing” as document provided by the United States Postal Service which provides the sender with the date an item was mailed and confirmation that the item was accepted by the United States Postal Service.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on January 19, 2012:

Provides a technical amendment that clarifies the language to ensure that a certificate of mailing is only required when sending first-class mail.

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 the Committee on Regulated Industries; and Senator Wise

580-02025-12

2012646c1

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.803, F.S.; revising the definition of the term "last known address"; amending s. 83.806, F.S.; revising notice requirements relating to enforcing an owner's lien; authorizing notice by e-mail or first-class mail with a certificate of mailing; providing requirements for e-mail notice; revising provisions relating to when notice given is presumed delivered; amending s. 83.808, F.S.; requiring rental agreements and applications for rental agreements to contain a provision for the disclosure of the applicant's membership in the uniformed services; providing an effective date.

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

Section 1. Subsection (6) of section 83.803, Florida Statutes, is amended to read:

83.803 Definitions.—As used in ss. 83.801-83.809:

(6) "Last known address" means the street that address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided ~~the address provided by the tenant~~ by hand delivery, first-class mail, or e-mail certified mail in a ~~subsequent written notice of a change of address.~~

Section 2. Subsections (1), (3), and (8) of section 83.806, Florida Statutes, are amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in

Page 1 of 3

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

580-02025-12

2012646c1

s. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person, by e-mail, or by first-class certified mail with a certificate of mailing, to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the owner sends notice of a pending sale of property to the tenant's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant by first-class mail with a certificate of mailing to the tenant's last known address before proceeding with the sale.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service, ~~registered,~~ and properly addressed with postage prepaid.

(8) In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by first-class certified mail with a certificate of mailing, to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years after ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of

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

580-02025-12

2012646c1

59 the balance. In the event that the owner's lien does not have
60 priority over all other liens, the sale proceeds shall be held
61 for the benefit of the holders of those liens having priority. A
62 notice of the amount of the sale proceeds shall be delivered by
63 the owner to the tenant or secured lienholders in person or by
64 first-class certified mail with a certificate of mailing to
65 their last known addresses. If the tenant or the secured
66 lienholders do not claim the sale proceeds within 2 years after
67 ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and
68 the owner shall have no further obligation with regard to the
69 payment of the proceeds.

70 Section 3. Section 83.808, Florida Statutes, is amended to
71 read:

72 83.808 Contracts ~~Contractual liens~~.-

73 (1) Nothing in ss. 83.801-83.809 shall be construed as in
74 any manner impairing or affecting the right of parties to create
75 liens by special contract or agreement nor shall it in any
76 manner impair or affect any other lien arising at common law, in
77 equity, or by any statute of this state or any other lien not
78 provided for in s. 83.805.

79 (2) A rental agreement or an application for a rental
80 agreement must contain a provision disclosing whether the
81 applicant is a member of the uniformed services as that term is
82 defined in 10 U.S.C. s. 101(a)(5).

83 Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic Self-Service Storage Act

Bill Number 646
(if applicable)

Name Tim Dietz

Amendment Barcode _____
(if applicable)

Job Title Sen VP - Gov't Relations

Address 1901 N. Beaumont St.

Phone 703-575-8000 x112

Street
Alexandria VA 22311
City State Zip

E-mail tdietz@selfstorage.com

Speaking: For Against Information

Representing Florida Self Storage 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

FEB 20, 2012

Meeting Date

Topic SELF STORAGE AMENDMENT

Bill Number 646
(if applicable)

Name STEVE CHAIRES

Amendment Barcode _____
(if applicable)

Job Title OWNER - PRESIDENT

Address 7963 APALACHEE PKWY

Phone 850-656-2890

Street

TALLAHASSEE FL 32311

City

State

Zip

E-mail AMSBIGDOG@EMBARQMAIL.COM

Speaking: For Against Information

Representing ADVANCED STORAGE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
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 Judiciary Committee

BILL: CS/CS/SB 1874

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senator Wise

SUBJECT: Child Visitation and Adoption

DATE: February 22, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Fav/CS
2.	O'Connor	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill substantially amends the Florida Adoption Act. Specifically, the bill:

- Removes legislative intent that all placements of minors for adoption be reported to the Department of Children and Family Services (DCF or department);
- Amends certain definitions in ch. 63, F.S.;
- Requires that a newborn who tests positive for illicit or prescription drugs or alcohol, but who shows no other signs of child abuse or neglect, be placed in the custody of a licensed child placing agency;
- Prohibits DCF from being involved with a properly surrendered newborn who tests positive for illicit or prescription drugs or alcohol, except when reasonable efforts to contact an adoption entity to take custody of the child fail;
- Prohibits a court from ordering scientific testing until the court determines that a previously entered judgment terminating parental rights is voidable;
- Requires a child to have lived with a grandparent for 6 continuous months in order for the grandparent to receive notice of a hearing on the petition to terminate parental rights;

- Prohibits an attorney from removing a child, who was voluntarily surrendered to the attorney, from a prospective adoptive home without a court order unless the child is in danger of imminent harm;
- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights with regard to his child;
- Outlines the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, providing for placement of the child;
- Provides criteria a court must consider when determining reasonable attorney fees;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of the advertising restrictions;
- Creates the crime “adoption deception”;
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement; and
- Makes technical and conforming changes.

The bill also creates a hierarchy for referring cases for supervised visitation or exchange monitoring for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies.

Additionally, the bill:

- Provides standards for supervised visitation or exchange programs to follow and requires that the programs affirm annually in a written agreement with court that they abide by state standards, and that receipt of state funds is contingent on the agreement after January 1, 2013;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program; and
- Creates a presumption that persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and makes such persons acting in good faith immune from civil and criminal liability.

This bill substantially amends the following sections of the Florida Statutes: 63.022, 63.032, 63.037, 63.039, 63.0423, 63.0425, 63.0427, 63.052, 63.053, 63.054, 63.062, 63.063, 63.082, 63.087, 63.088, 63.089, 63.092, 63.097, 63.152, 63.162, 63.167, 63.212, 63.213, 63.222, 63.2325, 753.06, 753.07, and 753.08.

II. Present Situation:

Adoption is the “act of creating the legal relationship between parent and child where it did not exist.”¹ The Legislature enacted the Florida Adoption Act in 1973² to “protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children . . . a permanent family life.”³ The Florida Adoption Act applies to public and private adoptions involving the following entities: Department of Children and Family Services (DCF or

¹ Section 63.032(2), F.S.

² Chapter 73-159, s. 2, Laws of Fla. Chapter 63, F.S., the Florida Adoption Act, governs all Florida adoptions.

³ Section 63.022(3), F.S.

department); child-placing agencies licensed by DCF under s. 63.202, F.S.; child-caring agencies registered under s. 409.176, F.S.; an attorney licensed to practice law in Florida; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

In fiscal year 2010-2011, over 3,000 children were adopted in Florida.⁴ Over the last 5 years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in 2 of the last 5 years.⁵ As a result of the improvement of adoption performance in the state, Florida has collected more than \$18 million in federal adoption incentive awards since 2009.⁶ Only Texas and Arizona have received more in adoption incentive awards during the same time period.⁷ From July 2010 to June 2011, over 51 percent of the children discharged from foster care to a finalized adoption were discharged in less than 24 months from the date of the child's latest removal from a home.⁸

Termination of Parental Rights

The laws relating to protection of children who are abused, neglected, or abandoned are found primarily in ch. 39, F.S. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.⁹ Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.¹⁰ A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required.¹¹ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the goal is in the best interests of the child.¹² Available permanency goals for children, in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights (TPR) has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; or
- Placement in another planned permanent living arrangement.¹³

If a child in foster care will not be reunited with a parent, the department will initiate a TPR proceeding.¹⁴ In making the determination to terminate a parent's rights, current law prohibits a court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child

⁴ Office of Adoption and Child Protection, Executive Office of the Governor, *Annual Report 2011*, at 59 (Dec. 2011), available at http://www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (last visited Jan. 29, 2012).

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 57.

⁸ *Id.* at 55. Of those children, the median length of stay in foster care was 20 months. *Id.* at 56.

⁹ See part VII, ch. 39, F.S.

¹⁰ Section 39.621(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 39.621(2), F.S.

¹⁴ See part X, ch. 39, F.S.

for the parent's rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.¹⁵

A birth parent may decide, as the dependency process unfolds, but prior to final TPR, to work with a private adoption entity¹⁶ to find a permanent home for the child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.¹⁷ A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of the minor child in the custody of DCF prior to the termination of their parental rights.¹⁸ The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents, and the court must then decide whether the prospective adoptive parents are properly qualified to adopt the child and whether the adoption is in the child's best interests.¹⁹

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the prospective adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.²⁰ The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s. 61.20(2), F.S.²¹ The preliminary home study must include, at a minimum, the following:

- Interview with the prospective adoptive parents;
- Records checks of DCF's central abuse hotline;
- Criminal history check through the Florida Department of Law Enforcement;
- Assessment of the physical environment of the home;
- Determination of the financial security of the prospective adoptive parents;
- Proof of adoptive parent counseling and education;
- Proof that information on adoption and the adoption process has been provided;
- Proof that information on support services available has been provided; and
- Copy of each signed acknowledgment of receipt of adoption entity disclosure forms.²²

A favorable home study is valid for one year after the date of its completion.²³ Following a favorable preliminary home study, a minor may be placed in the home pending entry of the

¹⁵ Section 39.621(6), F.S.

¹⁶ An "adoption entity" is defined as DCF, an agency, a registered child-caring agency, an intermediary (attorney), or a child-placing agency licensed in another state. Section 63.032(3), F.S.

¹⁷ Section 63.022(5), F.S.

¹⁸ Section 63.082(6)(b), F.S.

¹⁹ See s. 63.082(6), F.S.

²⁰ Section 63.092(3), F.S. Unless good cause is shown, a home study is not required for adult adoptions or when the petitioner for adoption is a stepparent or a relative.

²¹ *Id.* DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

²² *Id.*

judgment of adoption by the court. If the home study is unfavorable, placement may not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.²⁴

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interests of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.²⁵ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and provided to the petitioner.²⁶ The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.²⁷ The final home investigation must include:

- Information from the preliminary home study.
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement.
- Family social and medical history.
- Other information relevant to suitability of placement information required by rules promulgated by DCF.²⁸

Putative Father Registry

In 2003, Florida enacted a Putative Father Registry (registry), joining at least 23 other states with similar legislation.²⁹ The registry is maintained by the Office of Vital Statistics of the Department of Health (DOH).³⁰ The DOH is required, within existing resources, to provide and distribute a pamphlet or publication informing the public about the registry.³¹

If a man thinks that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the registry. By filing with the registry, the potential father is claiming paternity for the child and confirms his willingness to support the child.³² Additionally, he consents to DNA testing and may ultimately be required to pay child support.³³ A claim of paternity may be filed at any time prior to the child's birth, but may not be filed after the date a petition is filed for termination of parental rights.³⁴ The putative father may change his mind and, prior to the birth of the child; execute a

²³ *Id.*

²⁴ *Id.*

²⁵ Section 63.125(1), F.S.

²⁶ Section 63.125(2), F.S.

²⁷ Section 63.125(3), F.S.

²⁸ Section 63.125(5), F.S.

²⁹ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review of Section 63.0541, F.S., Relating to the Florida Putative Father Registry*, 4 (Interim Project Report 2008-206) (Oct. 2007), available at www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-206cf.pdf (last visited Jan. 29, 2012).

³⁰ Section 63.054(1), F.S.

³¹ Section 63.054(11), F.S.

³² Section 63.054(1), F.S.

³³ Section 63.054(2), F.S.

³⁴ Section 63.054(1), F.S.

notarized revocation of the claim of paternity.³⁵ Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor; the court will order the man's name be removed from the registry.³⁶

The registry was designed to protect the rights of all parties to an adoption proceeding: the rights of the unmarried biological father to notice and an opportunity to be heard, the rights of the birth mother to make an independent decision when the father fails to act, and the rights of the adoptive parent in retaining custody of the child.³⁷

Required Consent

Unless excused by the court, proper written consent for adoption is required from:

- The birth mother.
- The birth father if:
 - The minor was conceived or born while the father was married to the birth mother;
 - The minor is his child by adoption;
 - The minor has been adjudicated by the court to be his child by the date a petition is filed for TPR;
 - He has filed an affidavit of paternity by the date a petition is filed for TPR; or
 - In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the child and filed such acknowledgment with the Office of Vital Statistics. Consent of an unmarried biological father is only necessary if he follows the requirements of ch. 63, F.S.³⁸
- The minor, if 12 years of age or older.
- Any person lawfully entitled to custody of the minor.
- The court having jurisdiction to determine custody, if the person having physical custody of the minor cannot consent.³⁹

The petitioner in a TPR proceeding must make diligent efforts to notify, and obtain written consent from, all persons required to give consent.⁴⁰

A parent may execute consent to placement with an adoption entity while the child is in the custody of DCF, as long as it is done prior to the parental rights being terminated.⁴¹ Upon execution of the consent of the parent, the adoption entity may intervene in the dependency case as a party in interest and must provide the court a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement.⁴² If the court determines that the prospective adoptive parents are properly qualified to adopt the child

³⁵ Section 63.054(5), F.S.

³⁶ *Id.*

³⁷ Amy U. Hickman and Jeanne T. Tate, *Florida's Putative Father Registry: More Work is Needed to Follow the Established National Trends Toward Stable Adoptive Placements*, 82 FLA. B.J. 42, 42-43 (Jan. 2008); *see also* s. 63.022(1), F.S.

³⁸ Section 63.062(2), F.S.

³⁹ Section 63.062(1), F.S.

⁴⁰ Section 63.062(6), F.S.

⁴¹ Section 63.082(6), F.S.

⁴² *Id.*

and that the adoption appears to be in the best interest of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption.⁴³ A person may withdraw consent for a child older than 6 months of age who has been placed with prospective adoptive parents within 3 business days after execution of the consent.⁴⁴

Disclosure to Prospective Adoptive Parents

Adoption entities are required to provide a written disclosure statement to individuals seeking to adopt a child and to individuals seeking to place a child for adoption.⁴⁵ The disclosure must notify the individuals of the following:

- Name, address, and telephone number of the adoption entity providing the disclosure;
- The adoption entity does not provide legal representation or advice;
- A child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study;
- Valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child or after she is discharged from the hospital or birth center;
- Consent for adoption signed before the child attains the age of 6 months is binding and irrevocable from the moment it is signed. A consent for adoption signed after the child attains the age of six months is valid from the moment it is signed, but may be revoked until the child is placed in an adoptive home, or up to three days after it was signed, whichever period is longer;
- Consent for adoption is not valid if the signature of the person who signed the consent was obtained by fraud or duress;
- An unmarried biological father must act immediately in order to protect his parental rights;
- There are alternatives to adoption, including foster care, relative care, and parenting the child;
- The birth parent has the right to have someone witness the signing of the consent or affidavit of nonpaternity;
- If the birth parent is 14 years of age or younger, he or she must have a parent, legal guardian, or court-appointed guardian ad litem assist and advise the birth parent as to the adoption plan;
- The birth parent has a right to receive supportive counseling; and
- Payment of living or medical expenses by the prospective adoptive parents prior to the birth of the child does not, in any way, obligate the birth parent to sign the consent for adoption.⁴⁶

The adoption entity must also provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity. The information that must be disclosed includes:

⁴³ *Id.*

⁴⁴ Section 63.082(7), F.S.

⁴⁵ Section 63.085, F.S.

⁴⁶ *Id.*

- A family social and medical history form;
- The biological mother's medical records documenting her prenatal care and the birth and delivery of the child;
- A complete set of the child's medical records;
- All mental health, psychological, and psychiatric records concerning the child;
- The child's educational records;
- Records documenting all incidents that required DCF to provide services to the child; and
- Written information concerning the availability of adoption subsidies for the child, if applicable.⁴⁷

Some believe that complete disclosure can benefit the child, the adoptive family, and the adoption entity by ensuring the child is placed in an environment that can meet his or her needs – both emotionally and financially. Additionally, it provides the adopted person the opportunity to have full and accurate knowledge of his or her family, medical, and genetic history. Finally, providing such disclosure may help protect agencies and intermediaries from wrongful adoption lawsuits.⁴⁸

Florida's "Safe Haven" law

In 2000, the Florida Legislature passed legislation for the safe abandonment of a newborn.⁴⁹ The law provides that a parent may safely abandon an infant who is 7 days old or younger at a fire station, emergency medical services station, or hospital emergency room.⁵⁰ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment. Infants admitted to a hospital under the safe haven law are presumed eligible for Medicaid coverage. The hospital then transfers the infant to a licensed child-placing agency.

The child-placing agency is required to request assistance from law enforcement within 24 hours after receiving the infant to determine whether the child is a missing child.⁵¹ The licensed child-placing agency must seek emergency custody via court order, and may place the infant with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.⁵² The infant's parent may make a claim of parental rights to the court or to the entity having custody of the infant at any time before the TPR.⁵³ Parenthood may be determined by scientific testing, if ordered by the court.⁵⁴

Safe haven abandonment under s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under the statute is not deemed abandoned for purposes of the reporting and investigating requirements of ch. 39, F.S. Similarly, criminal investigation of a safe

⁴⁷ *Id.*

⁴⁸ Child Welfare Information Gateway, *Providing Background Information to Adoptive Parents* (2003), http://www.childwelfare.gov/pubs/f_backgroundbulletin.cfm (last visited Jan. 30, 2012).

⁴⁹ Chapter 2000-188, Laws of Fla.

⁵⁰ Section 383.50(1), F.S.

⁵¹ Section 63.0423(3), F.S.

⁵² Section 63.0423(2), F.S.

⁵³ Section 63.0423(6) and (7), F.S.

⁵⁴ Section 63.0423(7), F.S.

abandonment under the statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the “absolute right to remain anonymous,” and the law prohibits pursuit of the parent.⁵⁵ In addition, the statute establishes a presumption that the abandoning parent consented to TPR.⁵⁶ A parent may rebut the presumption by making a claim for parental rights prior to termination.

Supervised Visitation

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases where the child has been removed from the home. Other purposes of supervised visitation include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Facilitating appropriate child-parent interaction during supervised contact;
- Helping to build safe and healthy relationships between parents and children;
- Providing written factual information to the court relating to supervised contact, where appropriate;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.⁵⁷

The first supervised visitation program in Florida opened in 1993.⁵⁸ By 1996, there were 15 programs in the state, and by 2004, more than 60 programs had been established. Currently, there are more than 70 programs statewide and every judicial circuit in the state has at least one supervised visitation program.⁵⁹

The Clearinghouse on Supervised Visitation (clearinghouse)⁶⁰ was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or

⁵⁵ Section 383.50(5), F.S.

⁵⁶ Section 383.50(2), F.S.

⁵⁷ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Purposes of Supervised Visitation, available at <http://familyvio.csw.fsu.edu/CHVPG.php>. (last visited Feb. 2, 2012).

⁵⁸ The Family Nurturing Center of Jacksonville.

⁵⁹ Karen Oehme and Sharon Maxwell, Florida’s Supervised Visitation Programs: The Next Phase, 78 FLA. B.J. 44, 44 (Jan. 2004); See list of programs on the website of Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, available at <http://dev.familyvio.csw.fsu.edu/clearinghouse/fl-programs/> (last visited Feb. 2, 2012).

⁶⁰ The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the College of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research, available at <http://familyvio.csw.fsu.edu/CHV.php> (last visited Feb. 2, 2012).

department).⁶¹ Since 1996, the clearinghouse has received contracts on an annual basis from the department to continue this provision of technical assistance.⁶² Chapter 753, F.S., relating to supervised visitation, was created in 1996.⁶³

The Florida Supreme Court's Family Court Steering Committee (committee) began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to the Court. The Court endorsed the minimum standards and issued an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases to programs that agreed to comply with the standards.⁶⁴

In 2007, the Florida Legislature created s. 753.03 F.S., to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.⁶⁵ Section 753.03, F.S., required the clearinghouse to recommend a process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.⁶⁶ A final report containing the recommendations of the clearinghouse was received by the Legislature in December 2008.⁶⁷

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Florida Supreme Court on November 17, 1999.⁶⁸ In 1999, the chief justice requested that the legislature develop security protocols, certify programs, and monitor them to ensure compliance. Specifically, the chief justice told the Speaker of the House of Representatives and the President of the Senate:

The lack of guidelines or standards for these programs and lack of oversight of these programs, particularly as to staff and visitor safety and staff training, is of great concern It does not appear that this is an appropriate function for the chief judge, but, rather, is better suited to an executive branch agency I urge the Legislature to consider establishing a

⁶¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Report to the Legislature: Recommendations of the Supervised Visitation Standards Committee (Dec. 2008), available at http://familyvio.csw.fsu.edu/messageboard/wordpress/wp-content/uploads/2010/03/Final_Report_to_Legislature.pdf (last visited Feb. 2, 2012)

⁶² *Id.*

⁶³ Chapter 96-402, Laws of Florida.

⁶⁴ Oehme and Maxwell, *supra* note 3, at 44; *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012). http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf.

⁶⁵ Chapter 2007-109, Laws of Florida.

⁶⁶ Section 8, chapter 2007-109, Laws of Florida.

⁶⁷ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, *supra* note 5.

⁶⁸ Chapter 2007-109, Laws of Florida. *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012).

certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs.⁶⁹

III. Effect of Proposed Changes:

This bill substantially amends ch. 63, F.S., the Florida Adoption Act.

Putative Father Registry (sections 4, 10, and 11)

If the parental rights of a child have been terminated by a judgment entered pursuant to ch. 39, F.S.,⁷⁰ certain adoption provisions of ch. 63, F.S., are not required. For example, adoption proceedings initiated under ch. 39, F.S., are exempt from the disclosure requirements for the adoption entity, general provisions and procedures governing termination of parental rights pending adoption, and notice and service provisions governing termination of parental rights pending adoption. This bill adds that a search of the Florida Putative Father Registry, if a search was previously completed and documentation of the search is in the case file, is not required for adoption proceedings initiated under ch. 39, F.S.

The bill amends s. 63.054, F.S., which relates to actions required by an unmarried biological father. Under current law, an unmarried biological father may not file a claim of paternity with the Florida Putative Father Registry after the date a petition is filed for termination of parental rights (TPR). The bill provides that in a TPR proceeding, the petitioner must submit a copy of the petition for TPR to the Office of Vital Statistics *or* a document executed by the clerk of court showing the style of the case, the names of the persons whose rights are sought to be terminated, and the date and time of the filing of the petition. The bill also provides that an unmarried biological father who files a claim of paternity with the Office of Vital Statistics consents to submit to *and pay for* DNA testing.

Finally, the bill requires that an unmarried biological father “strictly” comply with ch. 63, F.S., and demonstrate a prompt and full commitment to his parental responsibilities or his child may be adopted without his consent. This provision may conflict with line 760 of the bill that requires “substantial compliance” with s. 63.062(2), F.S.

Adoption Entities and Surrendered Infants (sections 3, 5, 6, and 21)

This bill requires that all adoptions of minor children, with the exception of an adoption by a relative or stepparent, require the use of an adoption entity that will assume the responsibilities provided by law. The bill also amends the definition of “adoption entity” to include Florida-licensed child-placing agencies.

The bill amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants. The bill provides that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, must be placed in the custody of a licensed child placing agency. However, the bill provides that this provision

⁶⁹ Oehme and Maxwell, *supra* note 3, at 47 (citations omitted).

⁷⁰ Chapter 39, F.S., relates to all proceedings relating to children. Part X of ch. 39, F.S., is the section of law dealing with termination of parental rights in certain circumstances.

does not eliminate the reporting requirement under s. 383.50(7), F.S.⁷¹ The bill prohibits the Department of Children and Family Services (DCF or department) from becoming involved in a situation where an infant is properly surrendered under ss. 63.0423 and 383.50, F.S., unless reasonable efforts to contact a licensed child placing agency have not been successful.

The bill prohibits a court from ordering scientific testing to determine the paternity or maternity of a minor until the court determines that a previously entered judgment terminating the parental rights of a parent is voidable, unless all parties agree that such testing is in the best interests of the child.

Finally, the bill amends s. 63.152, F.S., authorizing an adoption entity (in addition to the clerk of court) to transmit a certified statement of an entry of a judgment of adoption to the state registrar of vital statistics in order to apply for a new birth record.

Consent and Disclosure (sections 14 and 15)

Current law states that the notice and consent provisions of ch. 63, F.S., as they relate to the father of a child, do not apply in cases where the child is conceived as a result of a violation of a criminal law of Florida, another state, or another country.⁷² The bill adds that a criminal conviction is not necessary for a court to find that a child was conceived as a result of a violation of a criminal law.

Following execution of a consent to adoption by the parent, as required by law, the bill requires the court to permit an adoption entity to intervene in a dependency hearing held pursuant to ch. 39, F.S. Current law provides the court discretion on allowing an adoption entity to intervene. Upon intervention, the bill directs the court to promptly hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents that have to be submitted is a preliminary home study. The bill provides that unless the court is concerned about the completeness of the home study or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

The bill provides that if the consent of one parent is set aside any other consents executed by the other parent may not be used by the parent whose consent was set aside to terminate or diminish the rights of the other parent whose consent was required for the adoption of the child.

The bill amends s. 63.085, F.S., to specify that a consent to adoption of a child 6 months of age or older may be revoked up to 3 *business* days after it was signed. Current law only provides a 3 day revocation period. The bill appears to be clarifying in nature in order to have s. 63.085(1), F.S., match s. 63.082(7), F.S.

⁷¹ Section 383.50, F.S., provides for the treatment of a surrendered newborn infant to a hospital, emergency medical services station, or fire station. If a hospital suspects child abuse or neglect after admitting the infant, the hospital must report the actual or suspected abuse and neglect to the central abuse hotline. See s. 383.50(7), F.S.

⁷² Section 63.082(1)(d), F.S.

The bill also clarifies in the disclosure required to be given to parents and prospective adoptive parents that if a parent is 14 years of age or younger, a parent, legal guardian, or court-appointed guardian ad litem must not only assist and advise the parent as to the adoption plan, but must also witness consent. Current law already provides that a consent or an affidavit of nonpaternity executed by a minor parent who is 14 years of age or younger must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.⁷³

Finally, the bill amends s. 63.085, F.S., to provide that if the prospective adoptive parents waive receipt of any of the records required to be disclosed to the prospective adoptive parents, a copy of the written notification of the waiver shall be filed with the court.

Termination of Parental Rights Pending Adoption (sections 12, 16, 17, and 18)

Section 63.062, F.S., requires that a petition to terminate parental rights pending adoption may only be granted if notice is served to the father of a minor child if:

- The minor was conceived or born while the father was married to the mother;
- The minor is his child by adoption;
- The minor has been adjudicated by the court to be his child before the date the petition is filed;
- The father has filed an affidavit of paternity before the date a petition for TPR is filed; or
- An unmarried biological father has acknowledged in writing that he is the father of the minor.

This bill also requires that notice be served to the father if he is listed on the child's birth certificate before the date a petition for TPR is filed.

The bill requires that the status of the father with regard to the father's rights or obligations be determined at the time the petition for TPR is filed, and that this status may not be modified, except as otherwise provided in s. 63.0423(9)(a), F.S.,⁷⁴ by any acts that occur after the petition has been filed. Florida case law has permitted the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.⁷⁵

The bill clarifies that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support to the child. However, the bill does not define what "reasonable and regular" means.

Current law requires consent of an unmarried biological father prior to termination of parental rights if the unmarried biological father has complied with certain requirements. If the child being placed with adoptive parents is 6 months old or younger, the unmarried biological father must have paid a fair and reasonable amount of living and medical expenses incurred in

⁷³ Section 63.082(1)(c), F.S.

⁷⁴ Section 63.0423(9)(a), F.S., provides that a judgment terminating parental rights is voidable if the court finds that a person knowingly gave false information that prevented the birth parent from timely making known his or her desire to assume parental responsibilities.

⁷⁵ See *D. and L.P. v. C.L.G. and A.R.L.*, 37 So. 3d 897 (Fla. 1st DCA 2010).

connection with the pregnancy and child's birth if he had knowledge of the pregnancy. The bill amends s. 63.062(2), F.S., to provide that the unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. If an unmarried biological father merely expresses a desire to fulfill his responsibilities toward his child, without any acts evidencing this intent, it does not satisfy the requirements of s. 63.062, F.S.

The bill requires an adoption entity to serve notice of an intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs consent to adoption, but only if the child is 6 months old or younger at the time she consents. The bill specifies that service of the notice of intended adoption plan is not required when the child is older than 6 months of age at the time of the execution of the consent by the mother. Under current law, there is no age limitation for the child in order for an adoption entity to have to serve notice of an intended adoption plan.

Finally, current law provides that a person may execute an affidavit of nonpaternity in lieu of having to give consent and by doing so waives notice to all court proceedings. The bill provides that the affidavit of nonpaternity does not need to deny the existence of a biological relationship, but rather it is sufficient if it contains a specific denial of parental obligations. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

Section 63.087(6), F.S., requires an answer or pleading be filed in response to a petition to terminate parental rights pending adoption. Current law provides that failure to appear at the hearing on the petition is grounds upon which the court may terminate parental rights. The bill specifies that failure to "personally" appear at the hearing constitutes grounds for terminating parental rights.

Current law requires the court to conduct an inquiry of the person who is placing the minor for adoption regarding the identity of:

- a) Any man to whom the mother of the minor was married at the time of conception or birth;
- b) Any man who has filed an affidavit of paternity;
- c) Any man who has adopted the minor;
- d) Any man who has been adjudicated as the father of the minor; and
- e) Any man whom the mother identified to the adoption entity as a potential biological father.⁷⁶

A person may provide information to the court regarding each inquiry enumerated in s. 63.088(4), F.S., unless the inquiry identifies a father under paragraphs (a), (b), (c), or (d).

Section 63.089(5), F.S., provides that if a court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and

⁷⁶ Section 63.088(4), F.S.

effect. The court must then enter an order based upon written findings providing for the placement of the minor. The bill prohibits the court from making custody decisions between competing eligible parties. Instead, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition.

Current law authorizes the court to order scientific testing to determine the paternity of a minor at any time when the court has jurisdiction over the minor. Under the bill, the court may only order scientific testing if the court determines that the consent of the alleged father would be required, unless all parties agree that testing is in the best interests of the child. However, the court may not order scientific testing to determine paternity if the child has a father as described in s. 63.088(4)(a)-(d), F.S., whose rights have not been terminated.

A parent may file a motion with the court to seek relief from a judgment terminating parental rights. The court must schedule a hearing within 30 days of such motion to determine what contact, if any, should be permitted between the parent and the child pending resolution of the motion. The bill amends subsection (7) of s. 63.089, F.S., to provide that a court may not authorize contact between the child and the parent unless the parent has previously established a bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating parental rights. Finally, the bill provides that if the court grants relief from the judgment terminating parental rights, and no new pleading to terminate parental rights is filed, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition. The bill also prohibits a court from placing a child with a person other than the adoptive parents without first obtaining a favorable home study of that person.

Attorney Fees (section 20)

This bill amends s. 63.097, F.S., which addresses the fees that are allowed in adoption cases. Specifically, the bill provides criteria that a court must take into consideration when determining reasonable attorney fees. The criteria the court must consider are:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.
- The fee customarily charged in the locality for similar legal services.

- The amount involved in the subject matter of the representation, the responsibility involved in the representation, and the results obtained.
- The time limitations imposed by the client or by the circumstances and any additional or special time demands or requests of the attorney by the client.
- The nature and length of the professional relationship with the client.
- The experience, reputation, diligence, and ability of the attorney.
- Whether the fee is fixed or contingent.

These factors are the same factors set out in Rule 4-1.5 of the Rules Regulating the Florida Bar, which relates to how an attorney should determine reasonable fees and costs.

Prohibited Acts (section 24)

The bill amends s. 63.212, F.S., making it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement that a minor is available for adoption or that a minor is sought for adoption. Under the bill, only a Florida licensed attorney or a Florida licensed adoption entity may place a paid advertisement or paid listing of the person's telephone number in a telephone directory that a child is offered or wanted for adoption or that the person is able to place, locate, or receive a child for adoption. This provision will prevent an attorney or adoption entity licensed in another state or country from advertising or broadcasting an offer of a child for adoption or soliciting a child from within the state for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may provide adoption services. The bill requires the telephone directory publisher to include in the advertisement the appropriate Florida Bar number or Florida license number of the attorney or entity placing the advertisement. Any person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree misdemeanor and is subject to a fine of up to \$150 per day for each day the violation continues.

The bill also establishes the elements to the crime of "adoption deception." Specifically, a birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- She knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- She accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective parent or adoption entity at the same time in an effort to secure the child for adoption; or
- She makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

A person who willfully commits adoption deception commits a misdemeanor of the second degree if the sums received do not exceed \$300. If the sums received are more than \$300, the person committing adoption deception commits a felony of the third degree. A person who commits adoption deception is also liable for damages as a result of acts or omissions, including

reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Preplanned Adoption (section 25)

This bill amends the definition of “volunteer mother” in the section of law related to preplanned adoption agreements. Specifically, the bill provides that a “volunteer mother” is a female at least 18 years of age who voluntarily agrees, subject to a right of rescission *if it is her biological child*, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate her parental rights and responsibilities to the child in favor of the intended father and intended mother.

The bill amends s. 63.213, F.S., to provide that a volunteer mother may only rescind her consent to relinquish parental rights in a preplanned adoption if the child is genetically related to her.

The bill also revises the definition of “child” to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Other Provisions (sections 1, 2, 7, 9, 13, 19, 22, 23, 26, and 27)

Private Placement

The bill requires that a petition for the termination of parental rights include facts to support that the parents of the child were informed of the availability of private placement of the child with an adoption entity.

Legislative Intent

The legislative intent of ch. 63, F.S., is amended to remove the “safeguard” that all placements of minors for adoption, except relative, adult, and stepparent adoptions, be reported to DCF.

Definitions

The bill revises the definitions of “abandoned,” “adoption entity,” “parent,” “suitability of the intended placement,” and “unmarried biological father” in ch. 63, F.S. “Abandoned” is amended to mean a situation in which the parent or person having legal custody of the child, while being able, makes *little or* no provision for the child’s support *and* makes little or no effort to communicate with the child, which situation is sufficient to evince an intent to reject parental responsibilities. It is unclear what may be considered “little” for purposes of this definition.

The definition of “adoption entity” is amended to include Florida-licensed child-placing agencies. The definition of “parent” is changed to clarify that it means a woman who gives birth to a child *and who is not a gestational surrogate*. Finally, the bill provides that a child’s biological father who is not married to the child’s mother at the time of conception or *on the date of the birth* of the child is an “unmarried biological father.”

Grandparent's Right to Notice

The bill amends s. 63.0425, F.S., to clarify that if a child has lived with a grandparent for at least 6 *continuous* months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption, then the adoption entity must provide notice of the hearing to the grandparent. The bill does not specify what “continuous” means and whether some intermittent breaks during the timeframe would still permit a grandparent to receive notice of the hearing.

Intermediaries

Under current law, in circumstances where an intermediary (an attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for the minor until the court orders approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does not become responsible for the child’s medical bills that were incurred before taking physical custody of the child after the execution of adoption consents.

Section 63.162, F.S., is amended to allow a birth parent to petition the court to appoint an intermediary or a licensed child-placing agency to contact an adult adoptee who has not registered with the adoption registry and advise him or her of the availability of the intermediary or agency, and that the birth parent or adult adoptee, as applicable, wishes to establish contact.

Home Study

The bill requires that prospective adoptive parents receive a *completed and approved* favorable preliminary home study within one year before placement of a child in the home. The bill requires that, in the case where a suitable prospective adoptive home is not available, the child must be placed in a licensed foster care home, with a person or family that has received a favorable preliminary home study, or with a relative until a suitable prospective adoptive home becomes available. Current law does not specify that the foster home be licensed and does not provide the option for placement with a person or family that has been home-study-approved.

The bill amends s. 63.092, F.S., to require a *signed* copy of the home study be provided to the intended adoptive parents who were the subject of the home study. The bill does not specify who is supposed to sign the copy of the home study.

State Adoption Information Center

The bill requires the state adoption information center, established in s. 63.167, F.S., to provide contact information for all adoption entities in a caller’s county or, if there are no adoption entities in the caller’s area, the contact information for the nearest adoption entity to the caller, when asked for a referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

Technical Provisions

The bill amends s. 63.222, F.S., to clarify that any adoption made before October 1, 2012, is valid and any proceedings that are pending as of that date and any subsequent amendments thereto are not affected by the changes made by the bill, unless the amendment is designated a remedial provision.

The bill also makes technical and conforming changes throughout ch. 63, F.S.

Supervised Visitation (sections 28, 29, and 30)

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., are the state standards for supervised visitation and exchange monitoring programs.

The bill also implements four out of the 10 recommendations contained in the final report to the Legislature from the clearinghouse, which was designated in 2007 to develop new standards for Florida supervised visitation programs. Specifically:

- Chapter 753, F.S., is amended to allow programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address these problems. Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:
 - Children's unwillingness to participate in visits;
 - Parental substance abuse;
 - Parental mental illness issues interfering with visits;
 - Parental misconduct on-site;
 - Parental misconduct off-site reported to visitation staff, including but not limited to, parental arrests, additional litigation in family, dependency, or criminal court, and violations of probation, stalking, and threats; and
 - Parental noncompliance with program rules, including no-shows and cancellations without cause.

Courts and child-placing agencies are required to adhere to a recommended hierarchy when referring cases to supervised visitation in both dependency and non-dependency cases.

Specifically:

In chs. 61 or 741, F.S., cases, the court is to direct referrals for supervised visitation or exchange monitoring as follows:

- A program that has a written agreement with the court; and
- A local licensed mental health professional who has met specified conditions.

In ch. 39, F.S., cases, the child-placing agency is to direct referrals for supervised visitation or exchange monitoring as follows:

- If the agency having primary responsibility determines that there are safety risks present during parent-child contact, the agency shall direct parties to a program that has affirmed in writing that it adheres to the state standards.
- If there are no safety risks present, the child protective investigator or case manager may:
 - Supervise the parent-child contact him or herself;
 - Designate a foster parent or relative to supervise the parent-child visits.
- If a program that adheres to the state standards does not exist and the child protective investigator or case manager cannot supervise the visit or designate a foster parent or relative to supervise the visit, the agency having primary responsibility over the case may refer the case to other qualified staff within the agency to supervise.
- The agency having primary responsibility for the case may only refer the case to a subcontractor or other agency if the subcontractor or agency has reviewed or received training on the clearinghouse's supervised visitation programs.

A court is still permitted to allow a litigant's relatives or friends to supervise the visits if the court decides such supervision is safe.

Chapter 753, F.S., is amended to create a presumption that any person providing services at a supervised visitation or exchange monitoring program, who has affirmed to the court that he or she is abiding by the state standards, is acting in good faith and is therefore immune from liability. This is similar to the immunity provision that currently protects Guardians ad Litem.⁷⁷

The bill restricts funding so that only programs, that affirm through a written agreement with the court that it abides by the standards, are eligible for state funding after January 1, 2013.

Additionally, the bill requires supervised visitation and supervised exchange programs to conduct a security background investigation on all volunteers and employees prior to hiring an employee or certifying a volunteer to serve. The security background investigation must include:

- Employment history checks;
- Checks of references;
- Local criminal history records checks through local law enforcement agencies; and
- Statewide criminal history record checks through the Florida Department of Law Enforcement (FDLE).

If requested, an employer must submit the personnel file of the employee or former employee who is the subject of the background investigation. The bill provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith.

⁷⁷ Section 39.822(1), F.S.

The purpose of the security background investigation is to ensure that a person is not hired as an employee or certified as a volunteer of a supervised visitation or supervised exchange program if the person has:

- An arrest awaiting final disposition;
- Been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; or
- Has been adjudicated delinquent and the record has not been sealed or expunged for any offense prohibited under s. 435.04, F.S.⁷⁸

The bill provides that all employees hired or volunteers certified after July 1, 2012, must undergo a level 2 background screening.⁷⁹ When analyzing the information obtained in the security background investigation, the supervised visitation or supervised exchange program must give particular emphasis to past activities involving children.

Finally, the bill provides that the supervised visitation or supervised exchange program has the sole discretion in determining whether to hire or certify a person based on the person's security background investigation.

The bill's requirement for a security background investigation is substantially similar to the background check requirement for guardians ad litem.⁸⁰

Effective Date (section 31)

The bill provides an effective date of October 1, 2012.

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:

Putative Father Registry

⁷⁸ Section 435.04, F.S., provides that all employees in positions of trust or responsibility must undergo a security background investigation, and the statute lists specific crimes that the employee undergoing the investigation must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty.

⁷⁹ Section 435.04, F.S., provides the standards for level 2 background screenings.

⁸⁰ See s. 39.821, F.S.

The application of the Putative Father Registry implicates the constitutional right of an unmarried biological father to parent his child. This fundamental right requires the strictest scrutiny. This means that the burden is on the state to show why its conduct is justified by providing a compelling state interest and that the conduct is a substantially effective method for achieving that purpose.⁸¹ The state must also show that the intrusion will accomplish the state's goal in the least intrusive way.⁸²

The United States Supreme Court has upheld the constitutionality of putative father registries, holding that an unmarried biological father does not have an absolute constitutional right to his biological child and that his rights are protected by the due process clause only if he takes some responsibility for the child.⁸³ The Florida Supreme Court has recognized this rationale as well.⁸⁴

Termination of Parental Rights

Parents have a fundamental liberty interest in determining the care and upbringing of their children. This interest is protected by both the Florida and federal constitutions.⁸⁵ During a termination of parental rights proceeding, notice must be given and consent must be received from certain parties prior to a court entering a judgment to terminate a parent's rights. The bill appears to be making it easier in some circumstances to move through the dependency process to receive a judgment terminating parental rights in order to place a child for adoption. Whenever a parent's rights are being terminated in order to place a child for adoption, the state and federal constitutional provisions relating to the fundamental liberty interest of a parent may be implicated.

Notice to an Unmarried Biological Father

The process of adoption involves a balancing of the interests of the child, the birth parents, and the adoptive parents. The bill appears to provide that an adoption entity is not required to provide notice of an intended adoption plan to an unmarried biological father when the child is older than 6 months of age at the time of the execution of the consent by the mother. In July 2007, the Florida Supreme Court ruled in favor of providing unmarried biological fathers with actual notice of the Florida Putative Father Registry and the legal obligations they must satisfy if they are to retain parental rights.⁸⁶ The Court also determined that unmarried biological fathers are entitled to receive actual notice of the intended adoption plan related to their child.⁸⁷ The Court went on to state that while the requirements for terminating the rights of an unmarried biological father

⁸¹ Russell W. Galloway, *Basic Substantive Due Process Analysis*, 26 U.S.F. L. REV. 625, 638 (1992).

⁸² *Id.*

⁸³ See *Lehr v. Robertson*, 463 U.S. 248 (1983).

⁸⁴ *Matter of Adoption of Doe*, 543 So. 2d 741, 748-49 (Fla. 1989); *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 966-67 (Fla. 1995).

⁸⁵ *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996).

⁸⁶ See *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189 (Fla. 2007).

⁸⁷ *Id.* at 200.

where the child is 6 months old or older were not discussed in the case, “the same ruling as to when service of notice is required would also apply.”⁸⁸

It is unclear how a court would rule if an unmarried biological father challenged this provision as violating his due process rights because he was not provided notice of the intended adoption plan.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes adoption entities to be contacted when a child is abandoned under the safe haven law and the bill directs the court to permit an adoption entity to intervene in a dependency hearing. Under current law, the definition of “adoption entity” includes intermediaries (attorneys). It appears that the bill may have a positive fiscal impact on private adoption entities (or intermediaries) because they may realize an increase in the number of children placed in the private adoption process.

C. Government Sector Impact:

It appears that certain provisions of the bill are designed to move toward the private adoption process in certain cases instead of going through the dependency process. To the extent the bill does this, the resources maintained by the Department of Children and Families (DCF or department) for the purpose of the dependency process may be able to be retained by the department. However, according to DCF, the department is unable to determine if the bill will have any direct fiscal impact on it.⁸⁹

VI. Technical Deficiencies:

The portion of the bill amending s. 63.062(3), F.S., states that service of the notice of intended adoption is not required when the child is older than 6 months of age at the time of the execution of the consent by the mother. Strictly construing this provision, it appears that even if an unmarried biological father has done everything to show his commitment to the child, if the child is over 6 months of age, the adoption entity does not have to serve him notice of the intended adoption plan. It is unclear if this is the intended result.

VII. Related Issues:

Section 63.082(6), F.S., provides that private adoption entities may intervene in the adoption proceeding of a minor child who is in the custody of the Department of Children and Families (DCF or department) if (a) parental rights have been terminated; (b) the entity produces a

⁸⁸ *Id.* at n. 6.

⁸⁹ Dep’t of Children and Families, *Staff Analysis and Economic Impact, SB 1874* (Jan. 12, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

favorable preliminary home study of the prospective adoptive parents; and (c) valid consents for placement of the minor with the entity have been obtained. If the court finds the adoption is in the best interest of the child, it shall enter an order immediately transferring custody to the prospective adoptive parents.

This bill amends s. 63.082(6), F.S., making it mandatory that the court permit an adoption entity to intervene in a dependency case if the entity has consent of the parents, a copy of the preliminary home study of the prospective adoptive parents, and any other evidence of the suitability of the placement.

The intervention of private adoption entities into the adoption of certain children in the custody of DCF was an issue researched by the Senate Committee on Children, Families, and Elder Affairs in 2009.⁹⁰ According to private adoption practitioners, there are widespread differences in adherence to the statute around the state. In several counties, intervention occurs without issue; in others, DCF and its community-based providers are reported to object to the intervention and slow the private adoption process.⁹¹ According to the Senate interim report, “[r]eports from case law and stakeholder comments seem to bear this out.”⁹² Senate professional staff of the Committee on Children, Families, and Elder Affairs provided three recommendations in its report:

- Adopt the ch. 39, F.S., manifest best interest of the child standard;
- Maintain the existing best interest standard and reinstate mandatory intervention; or
- Remove the matter from dependency court jurisdiction.⁹³

According to the report, “Senate professional staff recommends that the Legislature consider reinstating mandatory intervention and maintaining the existing best interest standard. That option appears to strike a balance between the constitutional rights of the birth parents and the concerns expressed by dependency practitioners.”⁹⁴

VIII. 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 Judiciary on February 20, 2012:

The committee substitute:

- Requires the Department of Children and Families to inform parents of the availability of private adoption in certain circumstances;

⁹⁰ See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Review of Section 63.082(6), F.S., Intervention by Private Adoption Entities in the Adoption of Certain Children in the Custody of the Department of Children and Families* (Interim Report 2010-104) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-104cf.pdf (last visited Jan. 30, 2012).

⁹¹ *Id.* at 3.

⁹² *Id.*

⁹³ *Id.* at 4.

⁹⁴ *Id.* at 5.

- Restores the term “licensed child-placing agency,” which was previously replaced with the term “adoption entity” throughout s. 63.0423, F.S., relating to procedures with respect to surrendered infants;
- Deletes language specifying that an adoption entity assumes responsibility of medical costs for a surrendered infant “upon entry of final judgment terminating parental rights”;
- Deletes a provision providing for agreements for contact between a child to be adopted and the birth parent or other relative;
- Adds language providing that an adoption entity, after completing a diligent search, has no further obligation to an unmarried biological father “on or before the date of filing a petition to terminate parental rights”;
- Specifying that prospective adoptive parents may waive the receipt of the child’s medical records if the cost to them exceeds \$500;
- Creates a hierarchy for referring cases for supervised visitation or exchange monitoring for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies;
- Provides standards for supervised visitation or exchange programs to follow and requires that the programs affirm annually in a written agreement with court that they abide by state standards, and that receipt of state funds is contingent on the agreement after January 1, 2013;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program; and
- Creates a presumption that persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and makes such persons acting in good faith immune from civil and criminal liability; and
- Makes other technical and conforming changes.

CS by Children, Families, and Elder Affairs on January 31, 2012:

The committee substitute:

- Amends the definition of “adoption entity” to include Florida-licensed child-placing agencies;
- Clarifies that a search of the Florida Putative Father Registry is not required in cases in which a minor becomes available for adoption after the parental rights of each parent have been terminated under ch. 39, F.S., if the search was previously completed and documentation of the search is contained in the case file;
- Restores the section of law relating to who may be adopted back to current law;
- Provides that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of an adoption entity. The committee substitute clarifies that the reporting requirements under the Safe Haven Law still apply;
- Changes the term “adoption entity” back to “person” for purposes of voiding a judgment terminating parental rights;
- Specifies that if the court orders mediation relating to a contact agreement between an adoptive parent and birth parent (or other relative or foster parent), the mediation

must be conducted pursuant to s. 61.183, F.S., and that the petitioner is responsible for any fees associated with the mediator services;

- Provides that the status of a father, which is determined at the time of the filing of the petition to terminate parental rights, may be modified if a judgment terminating parental rights is voided based on a finding that false information was given to the father which prevented him from making known his desire to assume parental responsibility for the child or from exercising his parental rights;
- Provides criteria that a court must consider when determining reasonable attorney fees; and
- Makes other technical or conforming changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
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	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 39.802, Florida
Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing;
elements.—

(4) A petition for termination of parental rights filed
under this chapter must contain facts supporting the following
allegations:

(a) That at least one of the grounds listed in s. 39.806
has been met.



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14 (b) That the parents of the child were informed of their
15 right to counsel at all hearings that they attended and that a
16 dispositional order adjudicating the child dependent was entered
17 in any prior dependency proceeding relied upon in offering a
18 parent a case plan as described in s. 39.806.

19 (c) That the manifest best interests of the child, in
20 accordance with s. 39.810, would be served by the granting of
21 the petition.

22 (d) That the parents of the child were informed of the
23 availability of private placement of the child with an adoption
24 entity, as defined in s. 63.032(3).

25 Section 2. Paragraphs (e) through (m) of subsection (4) of
26 section 63.022, Florida Statutes, are redesignated as paragraphs
27 (d) through (l), respectively, and subsection (2) and present
28 paragraph (d) of subsection (4) of that section are amended to
29 read:

30 63.022 Legislative intent.—

31 (2) It is the intent of the Legislature that in every
32 adoption, the best interest of the child should govern and be of
33 foremost concern in the court's determination. The court shall
34 make a specific finding as to the best interests ~~interest~~ of the
35 child in accordance with the provisions of this chapter.

36 (4) The basic safeguards intended to be provided by this
37 chapter are that:

38 ~~(d) All placements of minors for adoption are reported to~~
39 ~~the Department of Children and Family Services, except relative,~~
40 ~~adult, and stepparent adoptions.~~

41 Section 3. Subsections (1), (3), (12), (17), and (19) of
42 section 63.032, Florida Statutes, are amended to read:



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43 63.032 Definitions.—As used in this chapter, the term:

44 (1) "Abandoned" means a situation in which the parent or
45 person having legal custody of a child, while being able, makes
46 little or no provision for the child's support or ~~and~~ makes
47 little or no effort to communicate with the child, which
48 situation is sufficient to evince an intent to reject parental
49 responsibilities. If, in the opinion of the court, the efforts
50 of such parent or person having legal custody of the child to
51 support and communicate with the child are only marginal efforts
52 that do not evince a settled purpose to assume all parental
53 duties, the court may declare the child to be abandoned. In
54 making this decision, the court may consider the conduct of a
55 father towards the child's mother during her pregnancy.

56 (3) "Adoption entity" means the department, ~~an agency,~~ a
57 child-caring agency registered under s. 409.176, an
58 intermediary, a Florida-licensed child-placing agency, or a
59 child-placing agency licensed in another state which is
60 qualified by the department to place children in the State of
61 Florida.

62 (12) "Parent" means a woman who gives birth to a child and
63 who is not a gestational surrogate as defined in s. 742.13 or a
64 man whose consent to the adoption of the child would be required
65 under s. 63.062(1). If a child has been legally adopted, the
66 term "parent" means the adoptive mother or father of the child.
67 The term does not include an individual whose parental
68 relationship to the child has been legally terminated or an
69 alleged or prospective parent.

70 (17) "Suitability of the intended placement" means the
71 fitness of the intended placement, with primary consideration



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72 being given to the best interests ~~interest~~ of the child.

73 (19) "Unmarried biological father" means the child's
74 biological father who is not married to the child's mother at
75 the time of conception or on the date of the birth of the child
76 and who, before the filing of a petition to terminate parental
77 rights, has not been adjudicated by a court of competent
78 jurisdiction to be the legal father of the child or has not
79 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

80 Section 4. Section 63.037, Florida Statutes, is amended to
81 read:

82 63.037 Proceedings applicable to cases resulting from a
83 termination of parental rights under chapter 39.—A case in which
84 a minor becomes available for adoption after the parental rights
85 of each parent have been terminated by a judgment entered
86 pursuant to chapter 39 shall be governed by s. 39.812 and this
87 chapter. Adoption proceedings initiated under chapter 39 are
88 exempt from the following provisions of this chapter: the search
89 of the Florida Putative Father Registry required in s.
90 63.054(7), if a search was previously completed and
91 documentation of the search is contained in the case file;
92 disclosure requirements for the adoption entity provided in s.
93 63.085(1); general provisions governing termination of parental
94 rights pending adoption provided in s. 63.087; notice and
95 service provisions governing termination of parental rights
96 pending adoption provided in s. 63.088; and procedures for
97 terminating parental rights pending adoption provided in s.
98 63.089.

99 Section 5. Subsections (2) through (4) of section 63.039,
100 Florida Statutes, are renumbered as subsections (3) through (5),



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101 respectively, and a new subsection (2) is added to that section
102 to read:

103 63.039 Duty of adoption entity to prospective adoptive
104 parents; sanctions.—

105 (2) With the exception of an adoption by a relative or
106 stepparent, all adoptions of minor children require the use of
107 an adoption entity that will assume the responsibilities
108 provided in this section.

109 Section 6. Subsections (2), (4), (7), (8), and (9) of
110 section 63.0423, Florida Statutes, are amended to read:

111 63.0423 Procedures with respect to surrendered infants.—

112 (2) The licensed child-placing agency shall immediately
113 seek an order from the circuit court for emergency custody of
114 the surrendered infant. The emergency custody order shall remain
115 in effect until the court orders preliminary approval of
116 placement of the surrendered infant in the prospective home, at
117 which time the prospective adoptive parents become guardians
118 pending termination of parental rights and finalization of
119 adoption or until the court orders otherwise. The guardianship
120 of the prospective adoptive parents shall remain subject to the
121 right of the licensed child-placing agency to remove the
122 surrendered infant from the placement during the pendency of the
123 proceedings if such removal is deemed by the licensed child-
124 placing agency to be in the best interests ~~interest~~ of the
125 child. The licensed child-placing agency may immediately seek to
126 place the surrendered infant in a prospective adoptive home.

127 (4) The parent who surrenders the infant in accordance with
128 s. 383.50 is presumed to have consented to termination of
129 parental rights, and express consent is not required. Except



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130 when there is actual or suspected child abuse or neglect, the
131 licensed child-placing agency shall not attempt to pursue,
132 search for, or notify that parent as provided in s. 63.088 and
133 chapter 49. For purposes of s. 383.50 and this section, an
134 infant who tests positive for illegal drugs, narcotic
135 prescription drugs, alcohol, or other substances, but shows no
136 other signs of child abuse or neglect, shall be placed in the
137 custody of a licensed child placing agency. This provision does
138 not eliminate the reporting requirement under s. 383.50(7). When
139 the department is contacted regarding an infant properly
140 surrendered under this section and s. 383.50, the department
141 shall provide instruction to contact a licensed child placing
142 agency and may not take custody of the infant unless reasonable
143 efforts to contact a licensed child placing agency to accept the
144 infant have not been successful.

145 (7) If a claim of parental rights of a surrendered infant
146 is made before the judgment to terminate parental rights is
147 entered, the circuit court may hold the action for termination
148 of parental rights ~~pending subsequent adoption~~ in abeyance for a
149 period of time not to exceed 60 days.

150 (a) The court may order scientific testing to determine
151 maternity or paternity at the expense of the parent claiming
152 parental rights.

153 (b) The court shall appoint a guardian ad litem for the
154 surrendered infant and order whatever investigation, home
155 evaluation, and psychological evaluation are necessary to
156 determine what is in the best interests ~~interest~~ of the
157 surrendered infant.

158 (c) The court may not terminate parental rights solely on



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159 the basis that the parent left the infant at a hospital,
160 emergency medical services station, or fire station in
161 accordance with s. 383.50.

162 (d) The court shall enter a judgment with written findings
163 of fact and conclusions of law.

164 (8) Within 7 business days after recording the judgment,
165 the clerk of the court shall mail a copy of the judgment to the
166 department, the petitioner, and any person ~~the persons~~ whose
167 consent was ~~were~~ required, if known. The clerk shall execute a
168 certificate of each mailing.

169 (9) (a) A judgment terminating parental rights pending
170 adoption is voidable, and any later judgment of adoption of that
171 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
172 court finds that a person knowingly gave false information that
173 prevented the ~~birth~~ parent from timely making known his or her
174 desire to assume parental responsibilities toward the minor or
175 from exercising his or her parental rights. A motion under this
176 subsection must be filed with the court originally entering the
177 judgment. The motion must be filed within a reasonable time but
178 not later than 1 year after the entry of the judgment
179 terminating parental rights.

180 (b) No later than 30 days after the filing of a motion
181 under this subsection, the court shall conduct a preliminary
182 hearing to determine what contact, if any, will be permitted
183 between a ~~birth~~ parent and the child pending resolution of the
184 motion. Such contact may be allowed only if it is requested by a
185 parent who has appeared at the hearing and the court determines
186 that it is in the best interests ~~interest~~ of the child. If the
187 court orders contact between a ~~birth~~ parent and the child, the



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188 order must be issued in writing as expeditiously as possible and
189 must state with specificity any provisions regarding contact
190 with persons other than those with whom the child resides.

191 ~~(c) At the preliminary hearing, The court, upon the motion~~
192 ~~of any party or upon its own motion, may not~~ order scientific
193 testing to determine the paternity or maternity of the minor
194 until such time as the court determines that a previously
195 entered judgment terminating the parental rights of that parent
196 is voidable pursuant to paragraph (a), unless all parties agree
197 that such testing is in the best interests of the child if the
198 ~~person seeking to set aside the judgment is alleging to be the~~
199 ~~child's birth parent but has not previously been determined by~~
200 ~~legal proceedings or scientific testing to be the birth parent.~~
201 Upon the filing of test results establishing that person's
202 maternity or paternity of the surrendered infant, the court may
203 order visitation only if it appears to be as it deems
204 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

205 (d) Within 45 days after the preliminary hearing, the court
206 shall conduct a final hearing on the motion to set aside the
207 judgment and shall enter its written order as expeditiously as
208 possible thereafter.

209 Section 7. Subsection (1) of section 63.0425, Florida
210 Statutes, is amended to read:

211 63.0425 Grandparent's right to notice.—

212 (1) If a child has lived with a grandparent for at least 6
213 continuous months within the 24-month period immediately
214 preceding the filing of a petition for termination of parental
215 rights pending adoption, the adoption entity shall provide
216 notice to that grandparent of the hearing on the petition.



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217 Section 8. Section 63.0427, Florida Statutes, is amended to
218 read:

219 63.0427 Agreements for ~~Adopted minor's right to~~ continued
220 communication or contact between adopted child and ~~with~~
221 siblings, parents, and other relatives.-

222 (1) A child whose parents have had their parental rights
223 terminated and whose custody has been awarded to the department
224 pursuant to s. 39.811, and who is the subject of a petition for
225 adoption under this chapter, shall have the right to have the
226 court consider the appropriateness of postadoption communication
227 or contact, including, but not limited to, visits, written
228 correspondence, or telephone calls, with his or her siblings or,
229 upon agreement of the adoptive parents, with the parents who
230 have had their parental rights terminated or other specified
231 biological relatives. The court shall consider the following in
232 making such determination:

233 (a) Any orders of the court pursuant to s. 39.811(7).

234 (b) Recommendations of the department, the foster parents
235 if other than the adoptive parents, and the guardian ad litem.

236 (c) Statements of the prospective adoptive parents.

237 (d) Any other information deemed relevant and material by
238 the court.

239

240 If the court determines that the child's best interests will be
241 served by postadoption communication or contact, the court shall
242 so order, stating the nature and frequency of ~~for~~ the
243 communication or contact. This order shall be made a part of the
244 final adoption order, but ~~in no event shall~~ the continuing
245 validity of the adoption may not be contingent upon such



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246 postadoption communication or contact ~~and, nor shall~~ the ability
247 of the adoptive parents and child to change residence within or
248 outside the State of Florida may not be impaired by such
249 communication or contact.

250 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
251 adoptive parent may, at any time, petition for review of a
252 communication or contact order entered pursuant to subsection
253 (1), if the adoptive parent believes that the best interests of
254 the adopted child are being compromised, and the court may shall
255 ~~have authority to~~ order the communication or contact to be
256 terminated or modified, as the court deems to be in the best
257 interests of the adopted child; however, the court may not
258 increase contact between the adopted child and siblings, birth
259 parents, or other relatives without the consent of the adoptive
260 parent or parents. As part of the review process, the court may
261 order the parties to engage in mediation. The department shall
262 not be required to be a party to such review.

263 Section 9. Subsections (1), (2), (3), and (6) of section
264 63.052, Florida Statutes, are amended to read:

265 63.052 Guardians designated; proof of commitment.—

266 (1) For minors who have been placed for adoption with ~~and~~
267 ~~permanently committed to~~ an adoption entity, other than an
268 intermediary, such adoption entity shall be the guardian of the
269 person of the minor and has the responsibility and authority to
270 provide for the needs and welfare of the minor.

271 (2) For minors who have been voluntarily surrendered to an
272 intermediary through an execution of a consent to adoption, the
273 intermediary shall be responsible for the minor until the time a
274 court orders preliminary approval of placement of the minor in



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275 the prospective adoptive home, after which time the prospective
276 adoptive parents shall become guardians pending finalization of
277 adoption, subject to the intermediary's right and responsibility
278 to remove the child from the prospective adoptive home if the
279 removal is deemed by the intermediary to be in the best
280 interests interest of the child. The intermediary may not remove
281 the child without a court order unless the child is in danger of
282 imminent harm. After the execution of adoption consents, the
283 intermediary is not responsible for the minor child's medical
284 bills that were incurred before taking physical custody of the
285 child. Before ~~Prior to~~ the court's entry of an order granting
286 preliminary approval of the placement, the intermediary shall
287 have the responsibility and authority to provide for the needs
288 and welfare of the minor. A No minor may not shall be placed in
289 a prospective adoptive home until that home has received a
290 favorable preliminary home study, as provided in s. 63.092,
291 completed and approved within 1 year before such placement in
292 the prospective home. The provisions of s. 627.6578 shall remain
293 in effect notwithstanding the guardianship provisions in this
294 section.

295 (3) If a minor is surrendered to an adoption entity for
296 subsequent adoption and a suitable prospective adoptive home is
297 not available pursuant to s. 63.092 at the time the minor is
298 surrendered to the adoption entity, the minor must be placed in
299 a licensed foster care home, or with a person or family that has
300 received a favorable preliminary home study pursuant to
301 subsection (2), or with a relative until such a suitable
302 prospective adoptive home is available.

303 (6) Unless otherwise authorized by law or ordered by the



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304 court, the department is not responsible for expenses incurred
305 by other adoption entities participating in a placement of a
306 minor.

307 Section 10. Subsections (2) and (3) of section 63.053,
308 Florida Statutes, are amended to read:

309 63.053 Rights and responsibilities of an unmarried
310 biological father; legislative findings.—

311 (2) The Legislature finds that the interests of the state,
312 the mother, the child, and the adoptive parents described in
313 this chapter outweigh the interest of an unmarried biological
314 father who does not take action in a timely manner to establish
315 and demonstrate a relationship with his child in accordance with
316 the requirements of this chapter. An unmarried biological father
317 has the primary responsibility to protect his rights and is
318 presumed to know that his child may be adopted without his
319 consent unless he strictly complies with ~~the provisions of~~ this
320 chapter and demonstrates a prompt and full commitment to his
321 parental responsibilities.

322 (3) The Legislature finds that a birth mother and a birth
323 father have a right of ~~to~~ privacy.

324 Section 11. Subsections (1), (2), (4), and (13) of section
325 63.054, Florida Statutes, are amended to read:

326 63.054 Actions required by an unmarried biological father
327 to establish parental rights; Florida Putative Father Registry.—

328 (1) In order to preserve the right to notice and consent to
329 an adoption under this chapter, an unmarried biological father
330 must, as the "registrant," file a notarized claim of paternity
331 form with the Florida Putative Father Registry maintained by the
332 Office of Vital Statistics of the Department of Health which



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333 includes confirmation of his willingness and intent to support
334 the child for whom paternity is claimed in accordance with state
335 law. The claim of paternity may be filed at any time before the
336 child's birth, but may not be filed after the date a petition is
337 filed for termination of parental rights. In each proceeding for
338 termination of parental rights, the petitioner must submit to
339 the Office of Vital Statistics a copy of the petition for
340 termination of parental rights or a document executed by the
341 clerk of the court showing the style of the case, the names of
342 the persons whose rights are sought to be terminated, and the
343 date and time of the filing of the petition. The Office of Vital
344 Statistics may not record a claim of paternity after the date a
345 petition for termination of parental rights is filed. The
346 failure of an unmarried biological father to file a claim of
347 paternity with the registry before the date a petition for
348 termination of parental rights is filed also bars him from
349 filing a paternity claim under chapter 742.

350 (a) An unmarried biological father is excepted from the
351 time limitations for filing a claim of paternity with the
352 registry or for filing a paternity claim under chapter 742, if:

353 1. The mother identifies him to the adoption entity as a
354 potential biological father by the date she executes a consent
355 for adoption; and

356 2. He is served with a notice of intended adoption plan
357 pursuant to s. 63.062(3) and the 30-day mandatory response date
358 is later than the date the petition for termination of parental
359 rights is filed with the court.

360 (b) If an unmarried biological father falls within the
361 exception provided by paragraph (a), the petitioner shall also



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362 submit to the Office of Vital Statistics a copy of the notice of
363 intended adoption plan and proof of service of the notice on the
364 potential biological father.

365 (c) An unmarried biological father who falls within the
366 exception provided by paragraph (a) may not file a claim of
367 paternity with the registry or a paternity claim under chapter
368 742 after the 30-day mandatory response date to the notice of
369 intended adoption plan has expired. The Office of Vital
370 Statistics may not record a claim of paternity 30 days after
371 service of the notice of intended adoption plan.

372 (2) By filing a claim of paternity form with the Office of
373 Vital Statistics, the registrant expressly consents to submit to
374 and pay for DNA testing upon the request of any party, the
375 registrant, or the adoption entity with respect to the child
376 referenced in the claim of paternity.

377 (4) Upon initial registration, or at any time thereafter,
378 the registrant may designate a physical ~~an~~ address other than
379 his residential address for sending any communication regarding
380 his registration. Similarly, upon initial registration, or at
381 any time thereafter, the registrant may designate, in writing,
382 an agent or representative to receive any communication on his
383 behalf and receive service of process. The agent or
384 representative must file an acceptance of the designation, in
385 writing, in order to receive notice or service of process. The
386 failure of the designated representative or agent of the
387 registrant to deliver or otherwise notify the registrant of
388 receipt of correspondence from the Florida Putative Father
389 Registry is at the registrant's own risk and may ~~shall~~ not serve
390 as a valid defense based upon lack of notice.



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391 (13) The filing of a claim of paternity with the Florida
392 Putative Father Registry does not excuse or waive the obligation
393 of a petitioner to comply with the requirements of s. 63.088(4)
394 for conducting a diligent search and required inquiry with
395 respect to the identity of an unmarried biological father or
396 legal father which are set forth in this chapter.

397 Section 12. Paragraph (b) of subsection (1), subsections
398 (2), (3), and (4), and paragraph (a) of subsection (8) of
399 section 63.062, Florida Statutes, are amended to read:

400 63.062 Persons required to consent to adoption; affidavit
401 of nonpaternity; waiver of venue.-

402 (1) Unless supported by one or more of the grounds
403 enumerated under s. 63.089(3), a petition to terminate parental
404 rights pending adoption may be granted only if written consent
405 has been executed as provided in s. 63.082 after the birth of
406 the minor or notice has been served under s. 63.088 to:

407 (b) The father of the minor, if:

408 1. The minor was conceived or born while the father was
409 married to the mother;

410 2. The minor is his child by adoption;

411 3. The minor has been adjudicated by the court to be his
412 child before ~~by~~ the date a petition ~~is filed~~ for termination of
413 parental rights is filed;

414 4. He has filed an affidavit of paternity pursuant to s.
415 382.013(2)(c) or he is listed on the child's birth certificate
416 before ~~by~~ the date a petition ~~is filed~~ for termination of
417 parental rights is filed; or

418 5. In the case of an unmarried biological father, he has
419 acknowledged in writing, signed in the presence of a competent



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420 witness, that he is the father of the minor, has filed such
421 acknowledgment with the Office of Vital Statistics of the
422 Department of Health within the required timeframes, and has
423 complied with the requirements of subsection (2).
424

425 The status of the father shall be determined at the time of the
426 filing of the petition to terminate parental rights and may not
427 be modified, except as otherwise provided in s. 63.0423(9) (a),
428 for purposes of his obligations and rights under this chapter by
429 acts occurring after the filing of the petition to terminate
430 parental rights.

431 (2) In accordance with subsection (1), the consent of an
432 unmarried biological father shall be necessary only if the
433 unmarried biological father has complied with the requirements
434 of this subsection.

435 (a)1. With regard to a child who is placed with adoptive
436 parents more than 6 months after the child's birth, an unmarried
437 biological father must have developed a substantial relationship
438 with the child, taken some measure of responsibility for the
439 child and the child's future, and demonstrated a full commitment
440 to the responsibilities of parenthood by providing reasonable
441 and regular financial support to the child in accordance with
442 the unmarried biological father's ability, if not prevented from
443 doing so by the person or authorized adoption entity ~~agency~~
444 having lawful custody of the child, and either:

445 a. Regularly visited the child at least monthly, when
446 physically and financially able to do so and when not prevented
447 from doing so by the birth mother or the person or authorized
448 agency having lawful custody of the child; or



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449 b. Maintained regular communication with the child or with
450 the person or agency having the care or custody of the child,
451 when physically or financially unable to visit the child or when
452 not prevented from doing so by the birth mother or person or
453 authorized agency having lawful custody of the child.

454 ~~2. The mere fact that an unmarried biological father~~
455 ~~expresses a desire to fulfill his responsibilities towards his~~
456 ~~child which is unsupported by acts evidencing this intent does~~
457 ~~not preclude a finding by the court that the unmarried~~
458 ~~biological father failed to comply with the requirements of this~~
459 ~~subsection.~~

460 ~~2.3.~~ An unmarried biological father who openly lived with
461 the child for at least 6 months within the 1-year period
462 following the birth of the child and immediately preceding
463 placement of the child with adoptive parents and who openly held
464 himself out to be the father of the child during that period
465 shall be deemed to have developed a substantial relationship
466 with the child and to have otherwise met the requirements of
467 this paragraph.

468 (b) With regard to a child who is ~~younger than~~ 6 months of
469 age or younger at the time the child is placed with the adoptive
470 parents, an unmarried biological father must have demonstrated a
471 full commitment to his parental responsibility by having
472 performed all of the following acts prior to the time the mother
473 executes her consent for adoption:

474 1. Filed a notarized claim of paternity form with the
475 Florida Putative Father Registry within the Office of Vital
476 Statistics of the Department of Health, which form shall be
477 maintained in the confidential registry established for that



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478 purpose and shall be considered filed when the notice is entered
479 in the registry of notices from unmarried biological fathers.

480 2. Upon service of a notice of an intended adoption plan or
481 a petition for termination of parental rights pending adoption,
482 executed and filed an affidavit in that proceeding stating that
483 he is personally fully able and willing to take responsibility
484 for the child, setting forth his plans for care of the child,
485 and agreeing to a court order of child support and a
486 contribution to the payment of living and medical expenses
487 incurred for the mother's pregnancy and the child's birth in
488 accordance with his ability to pay.

489 3. If he had knowledge of the pregnancy, paid a fair and
490 reasonable amount of the living and medical expenses incurred in
491 connection with the mother's pregnancy and the child's birth, in
492 accordance with his financial ability and when not prevented
493 from doing so by the birth mother or person or authorized agency
494 having lawful custody of the child. The responsibility of the
495 unmarried biological father to provide financial assistance to
496 the birth mother during her pregnancy and to the child after
497 birth is not abated because support is being provided to the
498 birth mother or child by the adoption entity, a prospective
499 adoptive parent, or a third party, nor does it serve as a basis
500 to excuse the birth father's failure to provide support.

501 (c) The mere fact that a father expresses a desire to
502 fulfill his responsibilities toward his child which is
503 unsupported by acts evidencing this intent does not meet the
504 requirements of this section.

505 (d)-(e) The petitioner shall file with the court a
506 certificate from the Office of Vital Statistics stating that a



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507 diligent search has been made of the Florida Putative Father
508 Registry of notices from unmarried biological fathers described
509 in subparagraph (b)1. and that no filing has been found
510 pertaining to the father of the child in question or, if a
511 filing is found, stating the name of the putative father and the
512 time and date of filing. That certificate shall be filed with
513 the court prior to the entry of a final judgment of termination
514 of parental rights.

515 (e) ~~(d)~~ An unmarried biological father who does not comply
516 with each of the conditions provided in this subsection is
517 deemed to have waived and surrendered any rights in relation to
518 the child, including the right to notice of any judicial
519 proceeding in connection with the adoption of the child, and his
520 consent to the adoption of the child is not required.

521 (3) Pursuant to chapter 48, an adoption entity shall serve
522 a notice of intended adoption plan upon any known and locatable
523 unmarried biological father who is identified to the adoption
524 entity by the mother by the date she signs her consent for
525 adoption if the child is 6 months of age or younger at the time
526 the consent is executed ~~or who is identified by a diligent~~
527 ~~search of the Florida Putative Father Registry, or upon an~~
528 ~~entity whose consent is required.~~ Service of the notice of
529 intended adoption plan is not required ~~mandatory~~ when the
530 unmarried biological father signs a consent for adoption or an
531 affidavit of nonpaternity or when the child is more than 6
532 months of age at the time of the execution of the consent by the
533 mother. The notice may be served at any time before the child's
534 birth or before placing the child in the adoptive home. The
535 recipient of the notice may waive service of process by



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536 executing a waiver and acknowledging receipt of the plan. The
537 notice of intended adoption plan must specifically state that if
538 the unmarried biological father desires to contest the adoption
539 plan he must, within 30 days after service, file with the court
540 a verified response that contains a pledge of commitment to the
541 child in substantial compliance with subparagraph (2)(b)2. and a
542 claim of paternity form with the Office of Vital Statistics, and
543 must provide the adoption entity with a copy of the verified
544 response filed with the court and the claim of paternity form
545 filed with the Office of Vital Statistics. The notice must also
546 include instructions for submitting a claim of paternity form to
547 the Office of Vital Statistics and the address to which the
548 claim must be sent. If the party served with the notice of
549 intended adoption plan is an entity whose consent is required,
550 the notice must specifically state that the entity must file,
551 within 30 days after service, a verified response setting forth
552 a legal basis for contesting the intended adoption plan,
553 specifically addressing the best interests ~~interest~~ of the
554 child.

555 (a) If the unmarried biological father or entity whose
556 consent is required fails to timely and properly file a verified
557 response with the court and, in the case of an unmarried
558 biological father, a claim of paternity form with the Office of
559 Vital Statistics, the court shall enter a default judgment
560 against the ~~any~~ unmarried biological father or entity and the
561 consent of that unmarried biological father or entity shall no
562 longer be required under this chapter and shall be deemed to
563 have waived any claim of rights to the child. To avoid an entry
564 of a default judgment, within 30 days after receipt of service



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565 of the notice of intended adoption plan:

566 1. The unmarried biological father must:

567 a. File a claim of paternity with the Florida Putative
568 Father Registry maintained by the Office of Vital Statistics;

569 b. File a verified response with the court which contains a
570 pledge of commitment to the child in substantial compliance with
571 subparagraph (2) (b)2.; and

572 c. Provide support for the birth mother and the child.

573 2. The entity whose consent is required must file a
574 verified response setting forth a legal basis for contesting the
575 intended adoption plan, specifically addressing the best
576 interests ~~interest~~ of the child.

577 (b) If the mother identifies a potential unmarried
578 biological father within the timeframes required by the statute,
579 whose location is unknown, the adoption entity shall conduct a
580 diligent search pursuant to s. 63.088. If, upon completion of a
581 diligent search, the potential unmarried biological father's
582 location remains unknown and a search of the Florida Putative
583 Father Registry fails to reveal a match, the adoption entity
584 shall request in the petition for termination of parental rights
585 pending adoption that the court declare the diligent search to
586 be in compliance with s. 63.088, that the adoption entity has no
587 further obligation to provide notice to the potential unmarried
588 biological father, on or before the date of filing a petition to
589 terminate parental rights, and that the potential unmarried
590 biological father's consent to the adoption is not required.

591 (4) Any person whose consent is required under paragraph
592 (1) (b), or any other man, may execute an irrevocable affidavit
593 of nonpaternity in lieu of a consent under this section and by



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594 doing so waives notice to all court proceedings after the date
595 of execution. An affidavit of nonpaternity must be executed as
596 provided in s. 63.082. The affidavit of nonpaternity may be
597 executed prior to the birth of the child. The person executing
598 the affidavit must receive disclosure under s. 63.085 prior to
599 signing the affidavit. For purposes of this chapter, an
600 affidavit of nonpaternity is sufficient if it contains a
601 specific denial of parental obligations, and does not need to
602 deny the existence of a biological relationship.

603 (8) A petition to adopt an adult may be granted if:

604 (a) Written consent to adoption has been executed by the
605 adult and the adult's spouse, if any, unless the spouse's
606 consent is waived by the court for good cause.

607 Section 13. Subsection (2) of section 63.063, Florida
608 Statutes, is amended to read:

609 63.063 Responsibility of parents for actions; fraud or
610 misrepresentation; contesting termination of parental rights and
611 adoption.—

612 (2) Any person injured by a fraudulent representation or
613 action in connection with an adoption may pursue civil or
614 criminal penalties as provided by law. A fraudulent
615 representation is not a defense to compliance with the
616 requirements of this chapter and is not a basis for dismissing a
617 petition for termination of parental rights or a petition for
618 adoption, for vacating an adoption decree, or for granting
619 custody to the offended party. Custody and adoption
620 determinations must be based on the best interests ~~interest~~ of
621 the child in accordance with s. 61.13.

622 Section 14. Paragraph (d) of subsection (1), paragraphs (c)



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623 and (d) of subsection (3), paragraphs (a), (d), and (e) of
624 subsection (4), and subsections (6) and (7) of section 63.082,
625 Florida Statutes, are amended to read:

626 63.082 Execution of consent to adoption or affidavit of
627 nonpaternity; family social and medical history; revocation
628 ~~withdrawal~~ of consent.-

629 (1)

630 (d) The ~~notice and~~ consent provisions of this chapter as
631 they relate to the father birth of a child ~~or to legal fathers~~
632 do not apply in cases in which the child is conceived as a
633 result of a violation of the criminal laws of this or another
634 state or country, including, but not limited to, sexual battery,
635 unlawful sexual activity with certain minors under s. 794.05,
636 lewd acts perpetrated upon a minor, or incest. A criminal
637 conviction is not required for the court to find that the child
638 was conceived as a result of a violation of the criminal laws of
639 this state or another state or country.

640 (3)

641 (c) If any person who is required to consent is unavailable
642 because the person cannot be located, an ~~the petition to~~
643 ~~terminate parental rights pending adoption must be accompanied~~
644 ~~by the~~ affidavit of diligent search required under s. 63.088
645 shall be filed.

646 (d) If any person who is required to consent is unavailable
647 because the person is deceased, the petition to terminate
648 parental rights pending adoption must be accompanied by a
649 certified copy of the death certificate. In an adoption of a
650 stepchild or a relative, the certified copy of the death
651 certificate of the person whose consent is required may ~~must~~ be



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652 attached to the petition for adoption if a separate petition for
653 termination of parental rights is not being filed.

654 (4) (a) An affidavit of nonpaternity may be executed before
655 the birth of the minor; however, the consent to an adoption may
656 ~~shall~~ not be executed before the birth of the minor except in a
657 preplanned adoption pursuant to s. 63.213.

658 (d) The consent to adoption or the affidavit of
659 nonpaternity must be signed in the presence of two witnesses and
660 be acknowledged before a notary public who is not signing as one
661 of the witnesses. The notary public must legibly note on the
662 consent or the affidavit the date and time of execution. The
663 witnesses' names must be typed or printed underneath their
664 signatures. The witnesses' home or business addresses must be
665 included. The person who signs the consent or the affidavit has
666 the right to have at least one of the witnesses be an individual
667 who does not have an employment, professional, or personal
668 relationship with the adoption entity or the prospective
669 adoptive parents. The adoption entity must give reasonable
670 advance notice to the person signing the consent or affidavit of
671 the right to select a witness of his or her own choosing. The
672 person who signs the consent or affidavit must acknowledge in
673 writing on the consent or affidavit that such notice was given
674 and indicate the witness, if any, who was selected by the person
675 signing the consent or affidavit. The adoption entity must
676 include its name, address, and telephone number on the consent
677 to adoption or affidavit of nonpaternity.

678 (e) A consent to adoption being executed by the birth
679 parent must be in at least 12-point boldfaced type and shall
680 contain the following recitation of rights ~~in substantially the~~



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681 ~~following form:~~

682 CONSENT TO ADOPTION

683
684 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES
685 NOT HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP
686 WITH THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO
687 BE PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
688 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
689 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
690 WITNESSES YOU SELECTED, IF ANY.

691
692 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY
693 OF THE FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE
694 SIGNING THIS CONSENT:

- 695
- 696 1. CONSULT WITH AN ATTORNEY;
 - 697 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
698 LEGALLY PROHIBITED;
 - 699 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
700 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE CHILD;
 - 701 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED;
702 AND
 - 703 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
704 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE ADOPTION.
- 705

706 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS
707 TO YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
708 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
709 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED



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710 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
711 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
712 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
713 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
714 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
715 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
716 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
717 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
718 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
719 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
720 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
721 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
722 DURESS.

723
724 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR
725 DURESS AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

- 726
727 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
728 YOU WISH TO WITHDRAW YOUR CONSENT; AND
729 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR
730 DURESS.

731
732 This statement of rights is not required for the adoption of a
733 relative, an adult, a stepchild, or a child older than 6 months
734 of age. A consent form for the adoption of a child older than 6
735 months of age at the time of the execution of consent must
736 contain a statement outlining the revocation rights provided in
737 paragraph (c).

738 (6) (a) If a parent executes a consent for placement of a



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739 minor with an adoption entity or qualified prospective adoptive
740 parents and the minor child is in the custody of the department,
741 but parental rights have not yet been terminated, the adoption
742 consent is valid, binding, and enforceable by the court.

743 (b) Upon execution of the consent of the parent, the
744 adoption entity shall be permitted to ~~may~~ intervene in the
745 dependency case as a party in interest and must provide the
746 court that acquired ~~having~~ jurisdiction over the minor, pursuant
747 to the shelter or dependency petition filed by the department, a
748 copy of the preliminary home study of the prospective adoptive
749 parents and any other evidence of the suitability of the
750 placement. The preliminary home study must be maintained with
751 strictest confidentiality within the dependency court file and
752 the department's file. A preliminary home study must be provided
753 to the court in all cases in which an adoption entity has
754 intervened pursuant to this section. Unless the court has
755 concerns regarding the qualifications of the home study
756 provider, or concerns that the home study may not be adequate to
757 determine the best interests of the child, the home study
758 provided by the adoption entity shall be deemed to be sufficient
759 and no additional home study needs to be performed by the
760 department.

761 (c) If an adoption entity files a motion to intervene in
762 the dependency case in accordance with this chapter, the
763 dependency court shall promptly grant a hearing to determine
764 whether the adoption entity has filed the required documents to
765 be permitted to intervene and whether a change of placement of
766 the child is appropriate. At the time the court orders
767 intervention, the adoption entity shall provide the prospective



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768 adoptive parents with a written list of all MAP class training
769 programs within a 50 mile radius of the residence of the
770 prospective adoptive parents.

771 (d)~~(e)~~ Upon a determination by the court that the
772 prospective adoptive parents are properly qualified to adopt the
773 minor child and that the adoption appears to be in the best
774 interests ~~interest~~ of the minor child, the court shall
775 immediately order the transfer of custody of the minor child to
776 the prospective adoptive parents, under the supervision of the
777 adoption entity. The adoption entity shall thereafter provide
778 monthly supervision reports to the department until finalization
779 of the adoption.

780 (e)~~(d)~~ In determining whether the best interests ~~interest~~
781 of the child are ~~is~~ served by transferring the custody of the
782 minor child to the prospective adoptive parent selected by the
783 parent, the court shall consider the rights of the parent to
784 determine an appropriate placement for the child, the permanency
785 offered, the child's bonding with any potential adoptive home
786 that the child has been residing in, and the importance of
787 maintaining sibling relationships, if possible.

788 (7) If a person is seeking to revoke ~~withdraw~~ consent for a
789 child older than 6 months of age ~~who has been placed with~~
790 ~~prospective adoptive parents:~~

791 (a) The person seeking to revoke ~~withdraw~~ consent must, in
792 accordance with paragraph (4)(c), notify the adoption entity in
793 writing by certified mail, return receipt requested, within 3
794 business days after execution of the consent. As used in this
795 subsection, the term "business day" means any day on which the
796 United States Postal Service accepts certified mail for



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797 delivery.

798 (b) Upon receiving timely written notice from a person
799 whose consent to adoption is required of that person's desire to
800 revoke ~~withdraw~~ consent, the adoption entity must contact the
801 prospective adoptive parent to arrange a time certain for the
802 adoption entity to regain physical custody of the minor, unless,
803 upon a motion for emergency hearing by the adoption entity, the
804 court determines in written findings that placement of the minor
805 with the person who had legal or physical custody of the child
806 immediately before the child was placed for adoption may
807 endanger the minor or that the person who desires to revoke
808 ~~withdraw~~ consent is not required to consent to the adoption, has
809 been determined to have abandoned the child, or is otherwise
810 subject to a determination that the person's consent is waived
811 under this chapter.

812 (c) If the court finds that the placement may endanger the
813 minor, the court shall enter an order continuing the placement
814 of the minor with the prospective adoptive parents pending
815 further proceedings if they desire continued placement. If the
816 prospective adoptive parents do not desire continued placement,
817 the order must include, but need not be limited to, a
818 determination of whether temporary placement in foster care,
819 with the person who had legal or physical custody of the child
820 immediately before placing the child for adoption, or with a
821 relative is in the best interests ~~interest~~ of the child and
822 whether an investigation by the department is recommended.

823 (d) If the person revoking ~~withdrawing~~ consent claims to be
824 the father of the minor but has not been established to be the
825 father by marriage, court order, or scientific testing, the



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826 court may order scientific paternity testing and reserve ruling
827 on removal of the minor until the results of such testing have
828 been filed with the court.

829 (e) The adoption entity must return the minor within 3
830 business days after timely and proper notification of the
831 revocation ~~withdrawal~~ of consent or after the court determines
832 that revocation ~~withdrawal~~ is timely and in accordance with the
833 requirements of this chapter ~~valid and binding~~ upon
834 consideration of an emergency motion, as filed pursuant to
835 paragraph (b), to the physical custody of the person revoking
836 ~~withdrawing~~ consent or the person directed by the court. If the
837 person seeking to revoke ~~withdraw~~ consent claims to be the
838 father of the minor but has not been established to be the
839 father by marriage, court order, or scientific testing, the
840 adoption entity may return the minor to the care and custody of
841 the mother, if she desires such placement and she is not
842 otherwise prohibited by law from having custody of the child.

843 (f) Following the revocation period ~~for withdrawal of~~
844 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
845 ~~child with the prospective adoptive parents, whichever occurs~~
846 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
847 finds that the consent was obtained by fraud or duress.

848 (g) An affidavit of nonpaternity may be set aside ~~withdrawn~~
849 only if the court finds that the affidavit was obtained by fraud
850 or duress.

851 (h) If the consent of one parent is set aside or revoked in
852 accordance with this chapter, any other consents executed by the
853 other parent or a third party whose consent is required for the
854 adoption of the child may not be used by the parent whose



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855 consent was revoked or set aside to terminate or diminish the
856 rights of the other parent or third party whose consent was
857 required for the adoption of the child.

858 Section 15. Subsection (1) and paragraph (a) of subsection
859 (2) of section 63.085, Florida Statutes, are amended, and
860 paragraph (c) is added to subsection (2) of that section, to
861 read:

862 63.085 Disclosure by adoption entity.—

863 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE
864 PARENTS.—Within 14 days after a person seeking to adopt a minor
865 or a person seeking to place a minor for adoption contacts an
866 adoption entity in person or provides the adoption entity with a
867 mailing address, the entity must provide a written disclosure
868 statement to that person if the entity agrees or continues to
869 work with the person. The adoption entity shall also provide the
870 written disclosure to the parent who did not initiate contact
871 with the adoption entity within 14 days after that parent is
872 identified and located. For purposes of providing the written
873 disclosure, a person is considered to be seeking to place a
874 minor for adoption if that person has sought information or
875 advice from the adoption entity regarding the option of adoptive
876 placement. The written disclosure statement must be in
877 substantially the following form:

878

879 ADOPTION DISCLOSURE

880 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO
881 ALL PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A
882 MINOR FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS
883 REGARDING ADOPTION UNDER FLORIDA LAW:



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1. The name, address, and telephone number of the adoption entity providing this disclosure is:

Name:

Address:

Telephone Number:

2. The adoption entity does not provide legal representation or advice to parents or anyone signing a consent for adoption or affidavit of nonpaternity, and parents have the right to consult with an attorney of their own choosing to advise them.

3. With the exception of an adoption by a stepparent or relative, a child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study, including criminal and child abuse clearances.

4. A valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child, or the day the birth mother is notified, in writing, that she is fit for discharge from the licensed hospital or birth center. Any man may sign a valid consent for adoption at any time after the birth of the child.

5. A consent for adoption signed before the child attains the age of 6 months is binding and irrevocable from the moment it is signed unless it can be proven in court that the consent was obtained by fraud or duress. A consent for adoption signed after the child attains the age of 6 months is valid from the moment it is signed; however, it may be revoked up to 3 business days after it was signed.



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913 6. A consent for adoption is not valid if the signature of
914 the person who signed the consent was obtained by fraud or
915 duress.

916 7. An unmarried biological father must act immediately in
917 order to protect his parental rights. Section 63.062, Florida
918 Statutes, prescribes that any father seeking to establish his
919 right to consent to the adoption of his child must file a claim
920 of paternity with the Florida Putative Father Registry
921 maintained by the Office of Vital Statistics of the Department
922 of Health by the date a petition to terminate parental rights is
923 filed with the court, or within 30 days after receiving service
924 of a Notice of Intended Adoption Plan. If he receives a Notice
925 of Intended Adoption Plan, he must file a claim of paternity
926 with the Florida Putative Father Registry, file a parenting plan
927 with the court, and provide financial support to the mother or
928 child within 30 days following service. An unmarried biological
929 father's failure to timely respond to a Notice of Intended
930 Adoption Plan constitutes an irrevocable legal waiver of any and
931 all rights that the father may have to the child. A claim of
932 paternity registration form for the Florida Putative Father
933 Registry may be obtained from any local office of the Department
934 of Health, Office of Vital Statistics, the Department of
935 Children and Families, the Internet websites for these agencies,
936 and the offices of the clerks of the Florida circuit courts. The
937 claim of paternity form must be submitted to the Office of Vital
938 Statistics, Attention: Adoption Unit, P.O. Box 210,
939 Jacksonville, FL 32231.

940 8. There are alternatives to adoption, including foster
941 care, relative care, and parenting the child. There may be



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942 services and sources of financial assistance in the community
943 available to parents if they choose to parent the child.

944 9. A parent has the right to have a witness of his or her
945 choice, who is unconnected with the adoption entity or the
946 adoptive parents, to be present and witness the signing of the
947 consent or affidavit of nonpaternity.

948 10. A parent 14 years of age or younger must have a parent,
949 legal guardian, or court-appointed guardian ad litem to assist
950 and advise the parent as to the adoption plan and to witness
951 consent.

952 11. A parent has a right to receive supportive counseling
953 from a counselor, social worker, physician, clergy, or attorney.

954 12. The payment of living or medical expenses by the
955 prospective adoptive parents before the birth of the child does
956 not, in any way, obligate the parent to sign the consent for
957 adoption.

958 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

959 (a) At the time that an adoption entity is responsible for
960 selecting prospective adoptive parents for a born or unborn
961 child whose parents are seeking to place the child for adoption
962 or whose rights were terminated pursuant to chapter 39, the
963 adoption entity must provide the prospective adoptive parents
964 with information concerning the background of the child to the
965 extent such information is disclosed to the adoption entity by
966 the parents, legal custodian, or the department. This subsection
967 applies only if the adoption entity identifies the prospective
968 adoptive parents and supervises the ~~physical~~ placement of the
969 child in the prospective adoptive parents' home. If any
970 information cannot be disclosed because the records custodian



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971 failed or refused to produce the background information, the
972 adoption entity has a duty to provide the information if it
973 becomes available. An individual or entity contacted by an
974 adoption entity to obtain the background information must
975 release the requested information to the adoption entity without
976 the necessity of a subpoena or a court order. In all cases, the
977 prospective adoptive parents must receive all available
978 information by the date of the final hearing on the petition for
979 adoption. The information to be disclosed includes:

980 1. A family social and medical history form completed
981 pursuant to s. 63.162(6).

982 2. The biological mother's medical records documenting her
983 prenatal care and the birth and delivery of the child.

984 3. A complete set of the child's medical records
985 documenting all medical treatment and care since the child's
986 birth and before placement.

987 4. All mental health, psychological, and psychiatric
988 records, reports, and evaluations concerning the child before
989 placement.

990 5. The child's educational records, including all records
991 concerning any special education needs of the child before
992 placement.

993 6. Records documenting all incidents that required the
994 department to provide services to the child, including all
995 orders of adjudication of dependency or termination of parental
996 rights issued pursuant to chapter 39, any case plans drafted to
997 address the child's needs, all protective services
998 investigations identifying the child as a victim, and all
999 guardian ad litem reports filed with the court concerning the



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1000 child.

1001 7. Written information concerning the availability of
1002 adoption subsidies for the child, if applicable.

1003 (c) If the cost to the prospective adoptive parent or
1004 parents of obtaining the medical records described in paragraph
1005 (a) exceeds \$500, the prospective adoptive parent or parents may
1006 waive the receipt of the records by providing written
1007 notification of the waiver to the adoption entity and filing a
1008 copy of the written notification in the court file.

1009 Section 16. Subsection (6) of section 63.087, Florida
1010 Statutes, is amended to read:

1011 63.087 Proceeding to terminate parental rights pending
1012 adoption; general provisions.—

1013 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
1014 petition or any pleading requiring an answer must be filed in
1015 accordance with the Florida Family Law Rules of Procedure.
1016 Failure to file a written response to the petition constitutes
1017 grounds upon which the court may terminate parental rights.
1018 Failure to personally appear at the hearing constitutes grounds
1019 upon which the court may terminate parental rights. Any person
1020 present at the hearing to terminate parental rights pending
1021 adoption whose consent to adoption is required under s. 63.062
1022 must:

1023 (a) Be advised by the court that he or she has a right to
1024 ask that the hearing be reset for a later date so that the
1025 person may consult with an attorney; and

1026 (b) Be given an opportunity to admit or deny the
1027 allegations in the petition.

1028 Section 17. Subsection (4) of section 63.088, Florida



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1029 Statutes, is amended to read:

1030 63.088 Proceeding to terminate parental rights pending
1031 adoption; notice and service; diligent search.—

1032 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
1033 63.087, the court shall conduct an inquiry of the person who is
1034 placing the minor for adoption and of any relative or person
1035 having legal custody of the minor who is present at the hearing
1036 and likely to have the following information regarding the
1037 identity of:

1038 (a) Any man to whom the mother of the minor was married at
1039 any time when conception of the minor may have occurred or at
1040 the time of the birth of the minor;

1041 (b) Any man who has filed an affidavit of paternity
1042 pursuant to s. 382.013(2)(c) before the date that a petition for
1043 termination of parental rights is filed with the court;

1044 (c) Any man who has adopted the minor;

1045 (d) Any man who has been adjudicated by a court as the
1046 father of the minor child before the date a petition for
1047 termination of parental rights is filed with the court; and

1048 (e) Any man whom the mother identified to the adoption
1049 entity as a potential biological father before the date she
1050 signed the consent for adoption.

1051
1052 The information sought under this subsection may be provided to
1053 the court in the form of a sworn affidavit by a person having
1054 personal knowledge of the facts, addressing each inquiry
1055 enumerated in this subsection, except that, if the inquiry
1056 identifies a father under paragraph (a), paragraph (b), ~~or~~
1057 paragraph (c), or paragraph (d), the inquiry may not continue



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1058 further. The inquiry required under this subsection may be
1059 conducted before the birth of the minor.

1060 Section 18. Paragraph (d) of subsection (3), paragraph (b)
1061 of subsection (4), and subsections (5) and (7) of section
1062 63.089, Florida Statutes, are amended to read:

1063 63.089 Proceeding to terminate parental rights pending
1064 adoption; hearing; grounds; dismissal of petition; judgment.—

1065 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
1066 ADOPTION.—The court may enter a judgment terminating parental
1067 rights pending adoption if the court determines by clear and
1068 convincing evidence, supported by written findings of fact, that
1069 each person whose consent to adoption is required under s.
1070 63.062:

1071 (d) Has been properly served notice of the proceeding in
1072 accordance with the requirements of this chapter and has failed
1073 to file a written answer or personally appear at the evidentiary
1074 hearing resulting in the judgment terminating parental rights
1075 pending adoption;

1076 (4) FINDING OF ABANDONMENT.—A finding of abandonment
1077 resulting in a termination of parental rights must be based upon
1078 clear and convincing evidence that a parent or person having
1079 legal custody has abandoned the child in accordance with the
1080 definition contained in s. 63.032. A finding of abandonment may
1081 also be based upon emotional abuse or a refusal to provide
1082 reasonable financial support, when able, to a birth mother
1083 during her pregnancy.

1084 (b) The child has been abandoned when the parent of a child
1085 is incarcerated on or after October 1, 2001, in a federal,
1086 state, or county correctional institution and:



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1087 1. The period of time for which the parent has been or is
1088 expected to be incarcerated will constitute a significant
1089 portion of the child's minority. In determining whether the
1090 period of time is significant, the court shall consider the
1091 child's age and the child's need for a permanent and stable
1092 home. The period of time begins on the date that the parent
1093 enters into incarceration;

1094 2. The incarcerated parent has been determined by a court
1095 of competent jurisdiction to be a violent career criminal as
1096 defined in s. 775.084, a habitual violent felony offender as
1097 defined in s. 775.084, convicted of child abuse as defined in s.
1098 827.03, or a sexual predator as defined in s. 775.21; has been
1099 convicted of first degree or second degree murder in violation
1100 of s. 782.04 or a sexual battery that constitutes a capital,
1101 life, or first degree felony violation of s. 794.011; or has
1102 been convicted of a substantially similar offense in another
1103 jurisdiction. As used in this section, the term "substantially
1104 similar offense" means any offense that is substantially similar
1105 in elements and penalties to one of those listed in this
1106 subparagraph, and that is in violation of a law of any other
1107 jurisdiction, whether that of another state, the District of
1108 Columbia, the United States or any possession or territory
1109 thereof, or any foreign jurisdiction; or

1110 3. The court determines by clear and convincing evidence
1111 that continuing the parental relationship with the incarcerated
1112 parent would be harmful to the child and, for this reason,
1113 termination of the parental rights of the incarcerated parent is
1114 in the best interests ~~interest~~ of the child.

1115 (5) DISMISSAL OF PETITION.—If the court does not find by



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1116 clear and convincing evidence that parental rights of a parent
1117 should be terminated pending adoption, the court must dismiss
1118 the petition and that parent's parental rights that were the
1119 subject of such petition shall remain in full force under the
1120 law. The order must include written findings in support of the
1121 dismissal, including findings as to the criteria in subsection
1122 (4) if rejecting a claim of abandonment.

1123 (a) Parental rights may not be terminated based upon a
1124 consent that the court finds has been timely ~~revoked~~ ~~withdrawn~~
1125 under s. 63.082 or a consent to adoption or affidavit of
1126 nonpaternity that the court finds was obtained by fraud or
1127 duress.

1128 (b) The court must enter an order based upon written
1129 findings providing for the placement of the minor, but the court
1130 may not proceed to determine custody between competing eligible
1131 parties. The placement of the child shall revert to the parent
1132 or guardian who had physical custody of the child at the time of
1133 the placement for adoption unless the court determines upon
1134 clear and convincing evidence that this placement is not in the
1135 best interests of the child or is not an available option for
1136 the child. The court may not change the placement of a child who
1137 has established a bonded relationship with the current caregiver
1138 without providing for a reasonable transition plan consistent
1139 with the best interests of the child. The court may direct the
1140 parties to participate in a reunification or unification plan
1141 with a qualified professional to assist the child in the
1142 transition. The court may order scientific testing to determine
1143 the paternity of the minor only if the court has determined that
1144 the consent of the alleged father would be required, unless all



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1145 parties agree that such testing is in the best interests of the
1146 child. The court may not order scientific testing to determine
1147 paternity of an unmarried biological father if the child has a
1148 father as described in s. 63.088(4)(a)-(d) whose rights have not
1149 been previously terminated at any time during which the court
1150 has jurisdiction over the minor. Further proceedings, if any,
1151 regarding the minor must be brought in a separate custody action
1152 under chapter 61, a dependency action under chapter 39, or a
1153 paternity action under chapter 742.

1154 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1155 (a) A motion for relief from a judgment terminating
1156 parental rights must be filed with the court originally entering
1157 the judgment. The motion must be filed within a reasonable time,
1158 but not later than 1 year after the entry of the judgment. An
1159 unmarried biological father does not have standing to seek
1160 relief from a judgment terminating parental rights if the mother
1161 did not identify him to the adoption entity before the date she
1162 signed a consent for adoption or if he was not located because
1163 the mother failed or refused to provide sufficient information
1164 to locate him.

1165 (b) No later than 30 days after the filing of a motion
1166 under this subsection, the court must conduct a preliminary
1167 hearing to determine what contact, if any, shall be permitted
1168 between a parent and the child pending resolution of the motion.
1169 Such contact shall be considered only if it is requested by a
1170 parent who has appeared at the hearing and may not be awarded
1171 unless the parent previously established a bonded relationship
1172 with the child and the parent has pled a legitimate legal basis
1173 and established a prima facie case for setting aside the



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1174 judgment terminating parental rights. If the court orders
1175 contact between a parent and child, the order must be issued in
1176 writing as expeditiously as possible and must state with
1177 specificity any provisions regarding contact with persons other
1178 than those with whom the child resides.

1179 (c) At the preliminary hearing, the court, upon the motion
1180 of any party or upon its own motion, may order scientific
1181 testing to determine the paternity of the minor if the person
1182 seeking to set aside the judgment is alleging to be the child's
1183 father and that fact has not previously been determined by
1184 legitimacy or scientific testing. The court may order visitation
1185 with a person for whom scientific testing for paternity has been
1186 ordered and who has previously established a bonded relationship
1187 with the child.

1188 (d) Unless otherwise agreed between the parties or for good
1189 cause shown, the court shall conduct a final hearing on the
1190 motion for relief from judgment within 45 days after the filing
1191 and enter its written order as expeditiously as possible
1192 thereafter.

1193 (e) If the court grants relief from the judgment
1194 terminating parental rights and no new pleading is filed to
1195 terminate parental rights, the placement of the child shall
1196 revert to the parent or guardian who had physical custody of the
1197 child at the time of the original placement for adoption unless
1198 the court determines upon clear and convincing evidence that
1199 this placement is not in the best interests of the child or is
1200 not an available option for the child. The court may not change
1201 the placement of a child who has established a bonded
1202 relationship with the current caregiver without providing for a



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1203 reasonable transition plan consistent with the best interests of
1204 the child. The court may direct the parties to participate in a
1205 reunification or unification plan with a qualified professional
1206 to assist the child in the transition. The court may not direct
1207 the placement of a child with a person other than the adoptive
1208 parents without first obtaining a favorable home study of that
1209 person and any other persons residing in the proposed home and
1210 shall take whatever additional steps are necessary and
1211 appropriate for the physical and emotional protection of the
1212 child.

1213 Section 19. Subsection (3) of section 63.092, Florida
1214 Statutes, is amended to read:

1215 63.092 Report to the court of intended placement by an
1216 adoption entity; at-risk placement; preliminary study.—

1217 (3) PRELIMINARY HOME STUDY.—Before placing the minor in the
1218 intended adoptive home, a preliminary home study must be
1219 performed by a licensed child-placing agency, a child-caring
1220 agency registered under s. 409.176, a licensed professional, or
1221 agency described in s. 61.20(2), unless the adoptee is an adult
1222 or the petitioner is a stepparent or a relative. If the adoptee
1223 is an adult or the petitioner is a stepparent or a relative, a
1224 preliminary home study may be required by the court for good
1225 cause shown. The department is required to perform the
1226 preliminary home study only if there is no licensed child-
1227 placing agency, child-caring agency registered under s. 409.176,
1228 licensed professional, or agency described in s. 61.20(2), in
1229 the county where the prospective adoptive parents reside. The
1230 preliminary home study must be made to determine the suitability
1231 of the intended adoptive parents and may be completed prior to



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1232 identification of a prospective adoptive minor. A favorable
1233 preliminary home study is valid for 1 year after the date of its
1234 completion. Upon its completion, a signed copy of the home study
1235 must be provided to the intended adoptive parents who were the
1236 subject of the home study. A minor may not be placed in an
1237 intended adoptive home before a favorable preliminary home study
1238 is completed unless the adoptive home is also a licensed foster
1239 home under s. 409.175. The preliminary home study must include,
1240 at a minimum:

- 1241 (a) An interview with the intended adoptive parents;
- 1242 (b) Records checks of the department's central abuse
1243 registry and criminal records correspondence checks under s.
1244 39.0138 through the Department of Law Enforcement on the
1245 intended adoptive parents;
- 1246 (c) An assessment of the physical environment of the home;
- 1247 (d) A determination of the financial security of the
1248 intended adoptive parents;
- 1249 (e) Documentation of counseling and education of the
1250 intended adoptive parents on adoptive parenting;
- 1251 (f) Documentation that information on adoption and the
1252 adoption process has been provided to the intended adoptive
1253 parents;
- 1254 (g) Documentation that information on support services
1255 available in the community has been provided to the intended
1256 adoptive parents; and
- 1257 (h) A copy of each signed acknowledgment of receipt of
1258 disclosure required by s. 63.085.

1259
1260 If the preliminary home study is favorable, a minor may be



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1261 placed in the home pending entry of the judgment of adoption. A
1262 minor may not be placed in the home if the preliminary home
1263 study is unfavorable. If the preliminary home study is
1264 unfavorable, the adoption entity may, within 20 days after
1265 receipt of a copy of the written recommendation, petition the
1266 court to determine the suitability of the intended adoptive
1267 home. A determination as to suitability under this subsection
1268 does not act as a presumption of suitability at the final
1269 hearing. In determining the suitability of the intended adoptive
1270 home, the court must consider the totality of the circumstances
1271 in the home. A ~~Ne~~ minor may not be placed in a home in which
1272 there resides any person determined by the court to be a sexual
1273 predator as defined in s. 775.21 or to have been convicted of an
1274 offense listed in s. 63.089(4)(b)2.

1275 Section 20. Subsection (7) is added to section 63.097,
1276 Florida Statutes, to read:

1277 63.097 Fees.—

1278 (7) In determining reasonable attorney fees, the court
1279 shall use the following criteria:

1280 (a) The time and labor required, the novelty and difficulty
1281 of the question involved, and the skill requisite to perform the
1282 legal service properly.

1283 (b) The likelihood, if apparent to the client, that the
1284 acceptance of the particular employment will preclude other
1285 employment by the attorney.

1286 (c) The fee customarily charged in the locality for similar
1287 legal services.

1288 (d) The amount involved in the subject matter of the
1289 representation, the responsibility involved in the



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1290 representation, and the results obtained.

1291 (e) The time limitations imposed by the client or by the
1292 circumstances and, as between attorney and client, any
1293 additional or special time demands or requests of the attorney
1294 by the client.

1295 (f) The nature and length of the professional relationship
1296 with the client.

1297 (g) The experience, reputation, diligence, and ability of
1298 the attorney or attorneys performing the service and the skill,
1299 expertise, or efficiency of effort reflected in the actual
1300 providing of such services.

1301 (h) Whether the fee is fixed or contingent.

1302 Section 21. Section 63.152, Florida Statutes, is amended to
1303 read:

1304 63.152 Application for new birth record.—Within 30 days
1305 after entry of a judgment of adoption, the clerk of the court or
1306 the adoption entity shall transmit a certified statement of the
1307 entry to the state registrar of vital statistics on a form
1308 provided by the registrar. A new birth record containing the
1309 necessary information supplied by the certificate shall be
1310 issued by the registrar on application of the adopting parents
1311 or the adopted person.

1312 Section 22. Subsection (7) of section 63.162, Florida
1313 Statutes, is amended to read:

1314 63.162 Hearings and records in adoption proceedings;
1315 confidential nature.—

1316 (7) The court may, upon petition of an adult adoptee or
1317 birth parent, for good cause shown, appoint an intermediary or
1318 adoption entity ~~a licensed child-placing agency~~ to contact a



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1319 birth parent or adult adoptee, as applicable, who has not
1320 registered with the adoption registry pursuant to s. 63.165 and
1321 advise both ~~them~~ of the availability of the intermediary or
1322 adoption entity and that the birth parent or adult adoptee, as
1323 applicable, wishes to establish contact same.

1324 Section 23. Paragraph (c) of subsection (2) of section
1325 63.167, Florida Statutes, is amended to read:

1326 63.167 State adoption information center.—

1327 (2) The functions of the state adoption information center
1328 shall include:

1329 (c) Operating a toll-free telephone number to provide
1330 information and referral services. The state adoption
1331 information center shall provide contact information for all
1332 adoption entities in the caller's county or, if no adoption
1333 entities are located in the caller's county, the number of the
1334 nearest adoption entity when contacted for a referral to make an
1335 adoption plan and shall rotate the order in which the names of
1336 adoption entities are provided to callers.

1337 Section 24. Paragraph (g) of subsection (1) and subsections
1338 (2) and (8) of section 63.212, Florida Statutes, are amended to
1339 read:

1340 63.212 Prohibited acts; penalties for violation.—

1341 (1) It is unlawful for any person:

1342 (g) Except an adoption entity, to advertise or offer to the
1343 public, in any way, by any medium whatever that a minor is
1344 available for adoption or that a minor is sought for adoption;
1345 and, further, it is unlawful for any person to publish or
1346 broadcast any such advertisement or assist an unlicensed person
1347 or entity in publishing or broadcasting any such advertisement



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1348 without including a Florida license number of the agency or
1349 attorney placing the advertisement.

1350 1. Only a person who is an attorney licensed to practice
1351 law in this state or an adoption entity licensed under the laws
1352 of this state may place a paid advertisement or paid listing of
1353 the person's telephone number, on the person's own behalf, in a
1354 telephone directory that:

1355 a. A child is offered or wanted for adoption; or

1356 b. The person is able to place, locate, or receive a child
1357 for adoption.

1358 2. A person who publishes a telephone directory that is
1359 distributed in this state:

1360 a. Shall include, at the beginning of any classified
1361 heading for adoption and adoption services, a statement that
1362 informs directory users that only attorneys licensed to practice
1363 law in this state and licensed adoption entities may legally
1364 provide adoption services under state law.

1365 b. May publish an advertisement described in subparagraph
1366 1. in the telephone directory only if the advertisement contains
1367 the following:

1368 (I) For an attorney licensed to practice law in this state,
1369 the attorney's Florida Bar number.

1370 (II) For an adoption entity licensed under the laws of this
1371 state, the number on the adoption entity license.

1372 (2) Any woman who is a birth mother, or a woman who holds
1373 herself out to be a birth mother, who is interested in making an
1374 adoption plan and who knowingly or intentionally benefits from
1375 the payment of adoption-related expenses in connection with that
1376 adoption plan commits adoption deception if:



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1377 (a) The person knows or should have known that the woman is
1378 not pregnant at the time the sums were requested or received;

1379 (b) The woman accepts living expenses assistance from a
1380 prospective adoptive parent or adoption entity without
1381 disclosing that she is receiving living expenses assistance from
1382 another prospective adoptive parent or adoption entity at the
1383 same time in an effort to adopt the same child; or

1384 (c) The woman knowingly makes false representations to
1385 induce the payment of living expenses and does not intend to
1386 make an adoptive placement. It is unlawful for:

1387 ~~(a) Any person or adoption entity under this chapter to:~~

1388 ~~1. Knowingly provide false information; or~~

1389 ~~2. Knowingly withhold material information.~~

1390 ~~(b) A parent, with the intent to defraud, to accept~~
1391 ~~benefits related to the same pregnancy from more than one~~
1392 ~~adoption entity without disclosing that fact to each entity.~~

1393

1394 Any person who willfully commits adoption deception ~~violates any~~
1395 ~~provision of this subsection~~ commits a misdemeanor of the second
1396 degree, punishable as provided in s. 775.082 or s. 775.083, if
1397 the sums received by the birth mother or woman holding herself
1398 out to be a birth mother do not exceed \$300, and a felony of the
1399 third degree, punishable as provided in s. 775.082, s. 775.083,
1400 or s. 775.084, if the sums received by the birth mother or woman
1401 holding herself out to be a birth mother exceed \$300. In
1402 addition, the person is liable for damages caused by such acts
1403 or omissions, including reasonable attorney ~~attorney's~~ fees and
1404 costs incurred by the adoption entity or the prospective
1405 adoptive parent. Damages may be awarded through restitution in



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1406 any related criminal prosecution or by filing a separate civil
1407 action.

1408 (8) Unless otherwise indicated, a person who willfully and
1409 with criminal intent violates any provision of this section,
1410 excluding paragraph (1)(g), commits a felony of the third
1411 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1412 775.084. A person who willfully and with criminal intent
1413 violates paragraph (1)(g) commits a misdemeanor of the second
1414 degree, punishable as provided in s. 775.083; and each day of
1415 continuing violation shall be considered a separate offense. In
1416 addition, any person who knowingly publishes or assists with the
1417 publication of any advertisement or other publication that
1418 violates the requirements of paragraph (1)(g) commits a
1419 misdemeanor of the second degree, punishable as provided in s.
1420 775.083, and may be required to pay a fine of up to \$150 per day
1421 for each day of continuing violation.

1422 Section 25. Paragraph (b) of subsection (1), paragraphs (a)
1423 and (e) of subsection (2), and paragraphs (b), (h), and (i) of
1424 subsection (6) of section 63.213, Florida Statutes, are amended
1425 to read:

1426 63.213 Preplanned adoption agreement.—

1427 (1) Individuals may enter into a preplanned adoption
1428 arrangement as specified in this section, but such arrangement
1429 may not in any way:

1430 (b) Constitute consent of a mother to place her biological
1431 child for adoption until 48 hours after the following birth of
1432 the child and unless the court making the custody determination
1433 or approving the adoption determines that the mother was aware
1434 of her right to rescind within the 48-hour period after the



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1435 ~~following~~ birth of the child but chose not to rescind such
1436 consent. The volunteer mother's right to rescind her consent in
1437 a preplanned adoption applies only when the child is genetically
1438 related to her.

1439 (2) A preplanned adoption agreement must include, but need
1440 not be limited to, the following terms:

1441 (a) That the volunteer mother agrees to become pregnant by
1442 the fertility technique specified in the agreement, to bear the
1443 child, and to terminate any parental rights and responsibilities
1444 to the child she might have through a written consent executed
1445 at the same time as the preplanned adoption agreement, subject
1446 to a right of rescission by the volunteer mother any time within
1447 48 hours after the birth of the child, if the volunteer mother
1448 is genetically related to the child.

1449 (e) That the intended father and intended mother
1450 acknowledge that they may not receive custody or the parental
1451 rights under the agreement if the volunteer mother terminates
1452 the agreement or if the volunteer mother rescinds her consent to
1453 place her child for adoption within 48 hours after the birth of
1454 the child, if the volunteer mother is genetically related to the
1455 child.

1456 (6) As used in this section, the term:

1457 (b) "Child" means the child or children conceived by means
1458 of a fertility technique ~~an insemination~~ that is part of a
1459 preplanned adoption arrangement.

1460 (h) "Preplanned adoption arrangement" means the arrangement
1461 through which the parties enter into an agreement for the
1462 volunteer mother to bear the child, for payment by the intended
1463 father and intended mother of the expenses allowed by this



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1464 section, for the intended father and intended mother to assert
1465 full parental rights and responsibilities to the child if
1466 consent to adoption is not rescinded after birth by a the
1467 volunteer mother who is genetically related to the child, and
1468 for the volunteer mother to terminate, subject to any ~~a~~ right of
1469 rescission, all her parental rights and responsibilities to the
1470 child in favor of the intended father and intended mother.

1471 (i) "Volunteer mother" means a female at least 18 years of
1472 age who voluntarily agrees, subject to a right of rescission if
1473 it is her biological child, that if she should become pregnant
1474 pursuant to a preplanned adoption arrangement, she will
1475 terminate her parental rights and responsibilities to the child
1476 in favor of the intended father and intended mother.

1477 Section 26. Section 63.222, Florida Statutes, is amended to
1478 read:

1479 63.222 Effect on prior adoption proceedings.—Any adoption
1480 made before July 1, 2012, ~~is the effective date of this act~~
1481 ~~shall be~~ valid, and any proceedings pending on that the
1482 ~~effective date and any subsequent amendments thereto of this act~~
1483 are not affected unless the amendment is designated as a
1484 remedial provision ~~thereby~~.

1485 Section 27. Section 63.2325, Florida Statutes, is amended
1486 to read:

1487 63.2325 Conditions for invalidation ~~revocation~~ of a consent
1488 to adoption or affidavit of nonpaternity.—Notwithstanding the
1489 requirements of this chapter, a failure to meet any of those
1490 requirements does not constitute grounds for invalidation
1491 ~~revocation~~ of a consent to adoption or revocation ~~withdrawal~~ of
1492 an affidavit of nonpaternity unless the extent and circumstances



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1493 of such a failure result in a material failure of fundamental
1494 fairness in the administration of due process, or the failure
1495 constitutes or contributes to fraud or duress in obtaining a
1496 consent to adoption or affidavit of nonpaternity.

1497 Section 28. Section 753.06, Florida Statutes, is created to
1498 read:

1499 753.06 Standards; funding limitations.-

1500 (1) The standards provided in the final report submitted to
1501 the Legislature pursuant to s. 753.03(4) shall be the state's
1502 standards for supervised visitation and exchange monitoring.

1503 (2) Each supervised visitation program must annually affirm
1504 in a written agreement with the court that it abides by the
1505 standards. If the program has a contract with a child-placing
1506 agency, that contract must include an affirmation that the
1507 program complies with the standards. A copy of the agreement or
1508 contract must be made available to any party upon request.

1509 (3) On or after January 1, 2013, only a supervised
1510 visitation program that has affirmed in a written agreement with
1511 the court that it abides by and is in compliance with the state
1512 standards may receive state funding for supervised visitation or
1513 exchange monitoring services.

1514 Section 29. Section 753.07, Florida Statutes, is created to
1515 read:

1516 753.07 Referrals.-

1517 (1) Courts and referring child-placing agencies must adhere
1518 to the following priorities when determining where to refer
1519 cases for supervised visitation or exchange monitoring:

1520 (a) For cases that are filed under chapter 61 or chapter
1521 741 in which the courts are the primary source of referrals, the



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1522 court shall direct referrals as follows:

1523 1. The order must refer the parties to a supervised
1524 visitation program that has a written agreement with the court
1525 as provided in s. 753.06(2) if such a program exists in the
1526 community.

1527 2. If a program does not exist, or if the existing program
1528 is not able to accept the referral for any reason, the court may
1529 refer the case to a local licensed mental health professional.
1530 Such professional is not required to abide by the state
1531 standards established in s. 753.06; however, the professional
1532 must affirm to the court in writing that he or she has completed
1533 the clearinghouse's free, online supervised visitation training
1534 program and has read and understands the state standards.

1535 (b) In cases governed by chapter 39, the referring child-
1536 placing agency must adhere to the following:

1537 1. The agency that has primary responsibility for the case
1538 must ensure that each family is assessed for problems that could
1539 present safety risks during parent-child contact. If risks are
1540 found, agency staff shall consider referring the parties to a
1541 local supervised visitation program that has affirmed in writing
1542 that it adheres to the state standards if such a program exists
1543 in the community.

1544 2. If agency staff determines that supervised visitation is
1545 unnecessary, such program does not exist, or the existing
1546 program is unable to accept the referral for any reason, the
1547 child protective investigator or case manager who has primary
1548 responsibility for the case may:

1549 a. Supervise the parent-child contact himself or herself.
1550 However, before a child protective investigator or case manager



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1551 may supervise visits, he or she must review or receive training
1552 on the online training manual for the state's supervised
1553 visitation programs and affirm in writing to his or her own
1554 agency that he or she has received training on, or has reviewed
1555 and understands, the state standards.

1556 b. Designate a foster parent or relative to supervise the
1557 parent-child visits in those cases that do not warrant the
1558 supervision of the child protective investigator or case
1559 manager. However, the designated foster parent or relative must
1560 first be apprised that the case manager conducted a safety
1561 assessment described in subparagraph 1., and must be provided
1562 access to free training material on the foster parent's or
1563 relative's role in supervised visitation. Such materials may be
1564 created by the clearinghouse using existing or new material and
1565 must be approved by the department. Such training may be
1566 included in any preservice foster parent training conducted by
1567 the agency.

1568 3. If a program does not exist, or if the existing program
1569 is unable to accept the referral and the child protective
1570 investigator or case manager is unable to supervise the parent-
1571 child contact or designate a foster parent or relative to
1572 supervise the visits as described in subparagraph 2., the agency
1573 that has primary responsibility for the case may refer the case
1574 to other qualified staff within that agency to supervise the
1575 contact. However, before such staff member may supervise any
1576 visits, he or she must review or receive training on the online
1577 training manual for supervised visitation programs and affirm in
1578 writing to his or her own agency that he or she has received
1579 training on, or has reviewed and understands, the training



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1580 manual and the state standards.

1581 4. The agency that has primary responsibility for the case
1582 may not refer the case to a subcontractor or other agency to
1583 perform the supervised visitation unless that subcontractor's or
1584 other agency's child protective investigators or case managers
1585 who supervise onsite or offsite visits have reviewed or received
1586 training on the clearinghouse's online training manual for
1587 supervised visitation programs and affirm to their own agency
1588 that they have received training on, or have reviewed and
1589 understand, the training manual and the state standards.

1590 (2) This section does not prohibit the court from allowing
1591 a litigant's relatives or friends to supervise visits if the
1592 court determines that such supervision is safe. However, such
1593 informal supervisors must be made aware of the free online
1594 clearinghouse materials that they may voluntarily choose to
1595 review. These materials must provide information that helps
1596 educate the informal supervisors about the inherent risks and
1597 complicated dynamics of supervised visitation.

1598 (3) Supervised visitation programs may alert the court in
1599 writing if there are problems with referred cases and the court
1600 may set a hearing to address these problems.

1601 Section 30. Section 753.08, Florida Statutes, is created to
1602 read:

1603 753.08 Security background checks; immunity.—

1604 (1) Because of the special trust or responsibility placed
1605 on volunteers and employees of supervised visitation programs,
1606 such program must conduct a security background investigation
1607 before hiring an employee or certifying a volunteer.

1608 (a) A security background investigation must include, but



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1609 need not be limited to, employment history checks, reference
1610 checks, local criminal history records checks through local law
1611 enforcement agencies, and statewide criminal history records
1612 checks through the Department of Law Enforcement.

1613 (b) Upon request, an employer shall furnish a copy of the
1614 personnel record for the employee or former employee who is the
1615 subject of a security background investigation. The information
1616 contained in the record may include, but need not be limited to,
1617 disciplinary matters and the reason the employee was terminated
1618 from employment, if applicable. An employer who releases a
1619 personnel record for purposes of a security background
1620 investigation is presumed to have acted in good faith and is not
1621 liable for information contained in the record without a showing
1622 that the employer maliciously falsified the record.

1623 (c) All employees hired or volunteers certified on or after
1624 October 1, 2012, must undergo a state and national criminal
1625 history record check. Supervised visitation programs shall
1626 contract with the department, the court administrator, or the
1627 clerk of court to conduct level 2 background screening under
1628 chapter 435. The cost of fingerprint processing may be borne by
1629 the program or the person subject to the background check. The
1630 department, court administrator, or clerk of court shall review
1631 the criminal history results to determine if an applicant meets
1632 the minimum requirements and is responsible for payment to the
1633 Department of Law Enforcement by invoice to the department, the
1634 court administrator, or the clerk of court or by payment from a
1635 credit card by the applicant or a vendor on behalf of the
1636 applicant. If the department, court administrator, or clerk of
1637 court is unable to conduct the background check, the supervised



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1638 visitation program may participate in the Volunteer and Employee
1639 Criminal History System, as authorized by the National Child
1640 Protection Act of 1993, as amended, and s. 943.0542, to obtain
1641 criminal history information.

1642 (d) The security background investigation must ensure that
1643 a person is not hired as an employee or certified as a volunteer
1644 if the person has an arrest awaiting final disposition for, has
1645 been convicted of, regardless of adjudication, has entered a
1646 plea of nolo contendere or guilty to, or has been adjudicated
1647 delinquent and the record has not been sealed or expunged for,
1648 any offense prohibited under s. 435.04(2).

1649 (e) In analyzing and evaluating the information obtained in
1650 the security background investigation, the program must give
1651 particular emphasis to past activities involving children,
1652 including, but not limited to, child-related criminal offenses
1653 or child abuse. The program has sole discretion in determining
1654 whether to hire or certify a person based on his or her security
1655 background investigation.

1656 (2) A person who is providing supervised visitation or
1657 exchange monitoring services through a supervised visitation
1658 program and who affirms to the court in writing that he or she
1659 abides by the state standards described in s. 753.06 is
1660 presumed, prima facie, to be acting in good faith. Such persons
1661 acting in good faith are immune from civil and criminal
1662 liability with regard to the provision of the services.

1663 Section 31. This act shall take effect October 1, 2012.

1664
1665 ===== T I T L E A M E N D M E N T =====

1666 And the title is amended as follows:



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1667
1668 Delete everything before the enacting clause
1669 and insert:
1670 A bill to be entitled
1671 An act relating to child visitation and adoption;
1672 amending s. 39.802, F.S.; requiring the Department of
1673 Children and Families to inform the parents of a child
1674 of the availability of private placement of the child
1675 with an adoption entity in certain circumstances;
1676 amending s. 63.022, F.S.; revising legislative intent
1677 to delete reference to reporting requirements for
1678 placements of minors and exceptions; amending s.
1679 63.032, F.S.; revising definitions; amending s.
1680 63.037, F.S.; exempting adoption proceedings initiated
1681 under chapter 39, F.S., from a requirement for a
1682 search of the Florida Putative Father Registry;
1683 amending s. 63.039, F.S.; providing that all adoptions
1684 of minor children require the use of an adoption
1685 entity that will assume the responsibilities provided
1686 in specified provisions; providing an exception;
1687 amending s. 63.0423, F.S.; revising terminology
1688 relating to surrendered infants; providing that an
1689 infant who tests positive for illegal drugs, narcotic
1690 prescription drugs, alcohol, or other substances, but
1691 shows no other signs of child abuse or neglect, shall
1692 be placed in the custody of an adoption entity;
1693 providing that a specified reporting requirement is
1694 not superseded; providing that when the Department of
1695 Children and Family Services is contacted regarding a



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1696 surrendered infant who does not appear to have been
1697 the victim of actual or suspected child abuse or
1698 neglect, it shall provide instruction to contact an
1699 adoption entity and may not take custody of the
1700 infant; providing an exception; revising provisions
1701 relating to scientific testing to determine the
1702 paternity or maternity of a minor; amending s.
1703 63.0425, F.S.; requiring that a child's residence be
1704 continuous for a specified period in order to entitle
1705 the grandparent to notice of certain proceedings;
1706 amending s. 63.0427, F.S.; prohibiting a court from
1707 increasing contact between an adopted child and
1708 siblings, birth parents, or other relatives without
1709 the consent of the adoptive parent or parents;
1710 amending s. 63.052, F.S.; deleting a requirement that
1711 a minor be permanently committed to an adoption entity
1712 in order for the entity to be guardian of the person
1713 of the minor; limiting the circumstances in which an
1714 intermediary may remove a child; providing that an
1715 intermediary does not become responsible for a minor
1716 child's medical bills that were incurred before taking
1717 physical custody of the child; providing additional
1718 placement options for a minor surrendered to an
1719 adoption entity for subsequent adoption when a
1720 suitable prospective adoptive home is not available;
1721 amending s. 63.053, F.S.; requiring that an unmarried
1722 biological father strictly comply with specified
1723 provisions in order to protect his interests; amending
1724 s. 63.054, F.S.; authorizing submission of an



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1725 alternative document to the Office of Vital Statistics
1726 by the petitioner in each proceeding for termination
1727 of parental rights; providing that by filing a claim
1728 of paternity form the registrant expressly consents to
1729 paying for DNA testing; requiring that an alternative
1730 address designated by a registrant be a physical
1731 address; providing that the filing of a claim of
1732 paternity with the Florida Putative Father Registry
1733 does not relieve a person from compliance with
1734 specified requirements; amending s. 63.062, F.S.;
1735 revising requirements for when a minor's father must
1736 be served prior to termination of parental rights;
1737 providing that consent of an unmarried biological
1738 father is not required if he fails to comply with
1739 specified requirements; revising such requirements;
1740 providing that the mere fact that a father expresses a
1741 desire to fulfill his responsibilities toward his
1742 child which is unsupported by acts evidencing this
1743 intent does not meet the requirements; providing for
1744 the sufficiency of an affidavit of nonpaternity;
1745 providing an exception to a condition to a petition to
1746 adopt an adult; amending s. 63.063, F.S.; conforming
1747 terminology; amending s. 63.082, F.S.; revising
1748 language concerning applicability of notice and
1749 consent provisions in cases in which the child is
1750 conceived as a result of a violation of criminal law;
1751 providing that a criminal conviction is not required
1752 for the court to find that the child was conceived as
1753 a result of a violation of criminal law; requiring an



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1754 affidavit of diligent search to be filed whenever a
1755 person who is required to consent is unavailable
1756 because the person cannot be located; providing that
1757 in an adoption of a stepchild or a relative, a
1758 certified copy of the death certificate of the person
1759 whose consent is required may be attached to the
1760 petition for adoption if a separate petition for
1761 termination of parental rights is not being filed;
1762 authorizing the execution of an affidavit of
1763 nonpaternity before the birth of a minor in preplanned
1764 adoptions; revising language of a consent to adoption;
1765 providing that a home study provided by the adoption
1766 entity shall be deemed to be sufficient except in
1767 certain circumstances; providing for a hearing if an
1768 adoption entity moves to intervene in a dependency
1769 case; revising language concerning seeking to revoke
1770 consent to an adoption of a child older than 6 months
1771 of age; providing that if the consent of one parent is
1772 set aside or revoked, any other consents executed by
1773 the other parent or a third party whose consent is
1774 required for the adoption of the child may not be used
1775 by the parent who consent was revoked or set aside to
1776 terminate or diminish the rights of the other parent
1777 or third party; amending s. 63.085, F.S.; revising
1778 language of an adoption disclosure statement;
1779 requiring that a copy of a waiver by prospective
1780 adoptive parents of receipt of certain records must be
1781 filed with the court; amending s. 63.087, F.S.;

1782 specifying that a failure to personally appear at a



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1783 proceeding to terminate parental rights constitutes
1784 grounds for termination; amending s. 63.088, F.S.;
1785 providing that, in a termination of parental rights
1786 proceeding, if a required inquiry identifies a father
1787 who has been adjudicated by a court as the father of
1788 the minor child before the date a petition for
1789 termination of parental rights is filed, the inquiry
1790 must terminate at that point; amending s. 63.089,
1791 F.S.; specifying that failure to personally appear
1792 provides grounds for termination of parental rights in
1793 certain circumstances; revising provisions relating to
1794 dismissal of petitions to terminate parental rights;
1795 providing that contact between a parent seeking relief
1796 from a judgment terminating parental rights and a
1797 child may be awarded only in certain circumstances;
1798 providing for placement of a child in the event that a
1799 court grants relief from a judgment terminating
1800 parental rights and no new pleading is filed to
1801 terminate parental rights; amending s. 63.092, F.S.;
1802 requiring that a signed copy of the home study must be
1803 provided to the intended adoptive parents who were the
1804 subject of the study; amending s. 63.097, F.S.;
1805 providing guidelines for a court considering a
1806 reasonable attorney fee associated with adoption
1807 services; amending s. 63.152, F.S.; authorizing an
1808 adoption entity to transmit a certified statement of
1809 the entry of a judgment of adoption to the state
1810 registrar of vital statistics; amending s. 63.162,
1811 F.S.; authorizing a birth parent to petition that



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1812 court to appoint an intermediary or an adoption entity
1813 to contact an adult adoptee and advise both of the
1814 availability of the adoption registry and that the
1815 birth parent wishes to establish contact; amending s.
1816 63.167, F.S.; requiring that the state adoption center
1817 provide contact information for all adoption entities
1818 in a caller's county or, if no adoption entities are
1819 located in the caller's county, the number of the
1820 nearest adoption entity when contacted for a referral
1821 to make an adoption plan; amending s. 63.212, F.S.;
1822 restricting who may place a paid advertisement or paid
1823 listing of the person's telephone number offering
1824 certain adoption services; requiring of publishers of
1825 telephone directories to include certain statements at
1826 the beginning of any classified heading for adoption
1827 and adoption services; providing requirements for such
1828 advertisements; providing criminal penalties for
1829 violations; prohibiting the offense of adoption
1830 deception by a person who is a birth mother or a woman
1831 who holds herself out to be a birth mother; providing
1832 criminal penalties; providing liability for certain
1833 damages; amending s. 63.213, F.S.; providing that a
1834 preplanned adoption arrangement does not constitute
1835 consent of a mother to place her biological child for
1836 adoption until 48 hours following birth; providing
1837 that a volunteer mother's right to rescind her consent
1838 in a preplanned adoption applies only when the child
1839 is genetically related to her; revising the
1840 definitions of the terms "child," "preplanned adoption



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1841 arrangement," and "volunteer mother"; amending s.
1842 63.222, F.S.; providing that provisions designated as
1843 remedial may apply to any proceedings pending on the
1844 effective date of the provisions; amending s. 63.2325,
1845 F.S.; revising terminology relating to revocation of
1846 consent to adoption; creating s. 753.06, F.S.;
1847 adopting state standards for supervised visitation
1848 programs; requiring each program to annually affirm
1849 compliance with the standards to the court; providing
1850 that after a specified date only those programs that
1851 adhere to the state standards may receive state
1852 funding; creating s. 753.07, F.S.; providing factors
1853 for the court or child-placing agency to consider when
1854 referring cases for supervised visitation or exchange
1855 monitoring; specifying training requirements for
1856 persons providing such services; authorizing
1857 supervised visitation programs to alert the court to
1858 problems with referred cases; creating s. 753.08,
1859 F.S.; requiring supervised visitation programs to
1860 conduct security background checks of employees and
1861 volunteers; providing requirements for such checks;
1862 requiring that an employer furnish a copy of the
1863 personnel record for the employee or former employee
1864 upon request; providing immunity to employers who
1865 provide information for purposes of a background
1866 check; requiring that all applicants hired or
1867 certified by a program after a specified date undergo
1868 a level 2 background screening; delegating
1869 responsibility for screening criminal history



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1870 information and for costs; authorizing a supervised
1871 visitation program to participate in the Volunteer and
1872 Employee Criminal History System in order to obtain
1873 criminal history information; providing that certain
1874 persons providing services at a supervised visitation
1875 program are presumed to act in good faith; providing
1876 that such persons acting in good faith are immune from
1877 civil and criminal liability; providing an effective
1878 date.



887568

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment to Amendment (314440)

Delete line 46

and insert:

little or no provision for the child's support and makes

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

586-02730-12

20121874c1

1 A bill to be entitled
2 An act relating to adoption; amending s. 63.022, F.S.;
3 revising legislative intent to delete a reference to
4 reporting requirements for placements of minors and
5 exceptions; amending s. 63.032, F.S.; revising
6 definitions; amending s. 63.037, F.S.; exempting
7 adoption proceedings initiated under chapter 39, F.S.,
8 from a requirement for a search of the Florida
9 Putative Father Registry; amending s. 63.039, F.S.;
10 providing that all adoptions of minor children require
11 the use of an adoption entity that will assume the
12 responsibilities provided in specified provisions;
13 providing an exception; amending s. 63.0423, F.S.;
14 revising terminology relating to surrendered infants;
15 providing that an infant who tests positive for
16 illegal drugs, narcotic prescription drugs, alcohol,
17 or other substances, but shows no other signs of child
18 abuse or neglect, shall be placed in the custody of an
19 adoption entity; providing that if the Department of
20 Children and Family Services is contacted regarding a
21 surrendered infant who does not appear to have been
22 the victim of actual or suspected child abuse or
23 neglect, it shall provide instruction to contact an
24 adoption entity and may not take custody of the
25 infant; providing an exception; revising provisions
26 relating to scientific testing to determine the
27 paternity or maternity of a minor; amending s.
28 63.0425, F.S.; requiring that a child's residence be
29 continuous for a specified period in order to entitle

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30 the grandparent to notice of certain proceedings;
31 amending s. 63.0427, F.S.; prohibiting a court from
32 increasing contact between an adopted child and
33 siblings, birth parents, or other relatives without
34 the consent of the adoptive parent or parents;
35 providing for agreements for contact between a child
36 to be adopted and the birth parent, other relative, or
37 previous foster parent of the child; amending s.
38 63.052, F.S.; deleting a requirement that a minor be
39 permanently committed to an adoption entity in order
40 for the entity to be guardian of the person of the
41 minor; limiting the circumstances in which an
42 intermediary may remove a child; providing that an
43 intermediary does not become responsible for a minor
44 child's medical bills that were incurred before taking
45 physical custody of the child; providing additional
46 placement options for a minor surrendered to an
47 adoption entity for subsequent adoption when a
48 suitable prospective adoptive home is not available;
49 amending s. 63.053, F.S.; requiring that an unmarried
50 biological father strictly comply with specified
51 provisions in order to protect his interests; amending
52 s. 63.054, F.S.; authorizing submission of an
53 alternative document to the Office of Vital Statistics
54 by the petitioner in each proceeding for termination
55 of parental rights; providing that by filing a claim
56 of paternity form the registrant expressly consents to
57 paying for DNA testing; requiring that an alternative
58 address designated by a registrant be a physical

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59 address; providing that the filing of a claim of
 60 paternity with the Florida Putative Father Registry
 61 does not relieve a person from compliance with
 62 specified requirements; amending s. 63.062, F.S.;
 63 revising requirements for when a minor's father must
 64 be served prior to termination of parental rights;
 65 requiring that an unmarried biological father comply
 66 with specified requirements in order for his consent
 67 to be required for adoption; revising such
 68 requirements; providing that the mere fact that a
 69 father expresses a desire to fulfill his
 70 responsibilities towards his child which is
 71 unsupported by acts evidencing this intent does not
 72 meet the requirements; providing for the sufficiency
 73 of an affidavit of nonpaternity; providing an
 74 exception to a condition to a petition to adopt an
 75 adult; amending s. 63.063, F.S.; conforming
 76 terminology; amending s. 63.082, F.S.; revising
 77 language concerning applicability of notice and
 78 consent provisions in cases in which the child is
 79 conceived as a result of a violation of criminal law;
 80 providing that a criminal conviction is not required
 81 for the court to find that the child was conceived as
 82 a result of a violation of criminal law; requiring an
 83 affidavit of diligent search to be filed whenever a
 84 person who is required to consent is unavailable
 85 because the person cannot be located; providing that
 86 in an adoption of a stepchild or a relative, a
 87 certified copy of the death certificate of the person

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88 whose consent is required may be attached to the
 89 petition for adoption if a separate petition for
 90 termination of parental rights is not being filed;
 91 authorizing the execution of an affidavit of
 92 nonpaternity before the birth of a minor in preplanned
 93 adoptions; revising language of a consent to adoption;
 94 providing that a home study provided by the adoption
 95 entity shall be deemed to be sufficient except in
 96 certain circumstances; providing for a hearing if an
 97 adoption entity moves to intervene in a dependency
 98 case; revising language concerning seeking to revoke
 99 consent to an adoption of a child older than 6 months
 100 of age; providing that if the consent of one parent is
 101 set aside or revoked, any other consents executed by
 102 the other parent or a third party whose consent is
 103 required for the adoption of the child may not be used
 104 by the parent who consent was revoked or set aside to
 105 terminate or diminish the rights of the other parent
 106 or third party; amending s. 63.085, F.S.; revising
 107 language of an adoption disclosure statement;
 108 requiring that a copy of a waiver by prospective
 109 adoptive parents of receipt of certain records must be
 110 filed with the court; amending s. 63.087, F.S.;
 111 specifying that a failure to personally appear at a
 112 proceeding to terminate parental rights constitutes
 113 grounds for termination; amending s. 63.088, F.S.;
 114 providing that in a termination of parental rights
 115 proceeding if a required inquiry that identifies a
 116 father who has been adjudicated by a court as the

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117 father of the minor child before the date a petition
 118 for termination of parental rights is filed the
 119 inquiry must terminate at that point; amending s.
 120 63.089, F.S.; specifying that it is a failure to
 121 personally appear that provides grounds for
 122 termination of parental rights in certain
 123 circumstances; revising provisions relating to
 124 dismissal of petitions to terminate parental rights;
 125 providing that contact between a parent seeking relief
 126 from a judgment terminating parental rights and a
 127 child may be awarded only in certain circumstances;
 128 providing for placement of a child in the event that a
 129 court grants relief from a judgment terminating
 130 parental rights and no new pleading is filed to
 131 terminate parental rights; amending s. 63.092, F.S.;
 132 requiring that a signed copy of the home study must be
 133 provided to the intended adoptive parents who were the
 134 subject of the study; amending s. 63.097, F.S.;
 135 providing guidelines for a court considering a
 136 reasonable attorney fee associated with adoption
 137 services; amending s. 63.152, F.S.; authorizing an
 138 adoption entity to transmit a certified statement of
 139 the entry of a judgment of adoption to the state
 140 registrar of vital statistics; amending s. 63.162,
 141 F.S.; authorizing a birth parent to petition that
 142 court to appoint an intermediary or a licensed child-
 143 placing agency to contact an adult adoptee and advise
 144 both of the availability of the adoption registry and
 145 that the birth parent wishes to establish contact;

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146 amending s. 63.167, F.S.; requiring that the state
 147 adoption center provide contact information for all
 148 adoption entities in a caller's county or, if no
 149 adoption entities are located in the caller's county,
 150 the number of the nearest adoption entity when
 151 contacted for a referral to make an adoption plan;
 152 amending s. 63.212, F.S.; restricting who may place a
 153 paid advertisement or paid listing of the person's
 154 telephone number offering certain adoption services;
 155 requiring of publishers of telephone directories to
 156 include certain statements at the beginning of any
 157 classified heading for adoption and adoption services;
 158 providing requirements for such advertisements;
 159 providing criminal penalties for violations;
 160 prohibiting the offense of adoption deception by a
 161 person who is a birth mother or a woman who holds
 162 herself out to be a birth mother; providing criminal
 163 penalties; providing liability by violators for
 164 certain damages; amending s. 63.213, F.S.; providing
 165 that a preplanned adoption arrangement does not
 166 constitute consent of a mother to place her biological
 167 child for adoption until 48 hours following birth;
 168 providing that a volunteer mother's right to rescind
 169 her consent in a preplanned adoption applies only when
 170 the child is genetically related to her; revising the
 171 definitions of the terms "child," "preplanned adoption
 172 arrangement," and "volunteer mother"; amending s.
 173 63.222, F.S.; providing that provisions designated as
 174 remedial may apply to any proceedings pending on the

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175 effective date of the provisions; amending s. 63.2325,
 176 F.S.; revising terminology relating to revocation of
 177 consent to adoption; providing an effective date.

178
 179 Be It Enacted by the Legislature of the State of Florida:

180
 181 Section 1. Present paragraphs (e) through (m) of subsection
 182 (4) of section 63.022, Florida Statutes, are redesignated as
 183 paragraphs (d) through (l), respectively, and subsection (2) and
 184 present paragraph (d) of subsection (4) of that section are
 185 amended to read:

186 63.022 Legislative intent.—

187 (2) It is the intent of the Legislature that in every
 188 adoption, the best interest of the child should govern and be of
 189 foremost concern in the court's determination. The court shall
 190 make a specific finding as to the best interests ~~interest~~ of the
 191 child in accordance with the provisions of this chapter.

192 (4) The basic safeguards intended to be provided by this
 193 chapter are that:

194 ~~(d) All placements of minors for adoption are reported to~~
 195 ~~the Department of Children and Family Services, except relative,~~
 196 ~~adult, and stepparent adoptions.~~

197 Section 2. Subsections (1), (3), (12), (17), and (19) of
 198 section 63.032, Florida Statutes, are amended to read:

199 63.032 Definitions.—As used in this chapter, the term:

200 (1) "Abandoned" means a situation in which the parent or
 201 person having legal custody of a child, while being able, makes
 202 little or no provision for the child's support or ~~and~~ makes
 203 little or no effort to communicate with the child, which

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204 situation is sufficient to evince an intent to reject parental
 205 responsibilities. If, in the opinion of the court, the efforts
 206 of such parent or person having legal custody of the child to
 207 support and communicate with the child are only marginal efforts
 208 that do not evince a settled purpose to assume all parental
 209 duties, the court may declare the child to be abandoned. In
 210 making this decision, the court may consider the conduct of a
 211 father towards the child's mother during her pregnancy.

212 (3) "Adoption entity" means the department, an agency, a
 213 child-caring agency registered under s. 409.176, an
 214 intermediary, a Florida-licensed child-placing agency, or a
 215 child-placing agency licensed in another state which is
 216 qualified by the department to place children in the State of
 217 Florida.

218 (12) "Parent" means a woman who gives birth to a child and
 219 who is not a gestational surrogate as defined in s. 742.13 or a
 220 man whose consent to the adoption of the child would be required
 221 under s. 63.062(1). If a child has been legally adopted, the
 222 term "parent" means the adoptive mother or father of the child.
 223 The term does not include an individual whose parental
 224 relationship to the child has been legally terminated or an
 225 alleged or prospective parent.

226 (17) "Suitability of the intended placement" means the
 227 fitness of the intended placement, with primary consideration
 228 being given to the best interests ~~interest~~ of the child.

229 (19) "Unmarried biological father" means the child's
 230 biological father who is not married to the child's mother at
 231 the time of conception or on the date of the birth of the child
 232 and who, before the filing of a petition to terminate parental

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233 rights, has not been adjudicated by a court of competent
 234 jurisdiction to be the legal father of the child or has not
 235 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

236 Section 3. Section 63.037, Florida Statutes, is amended to
 237 read:

238 63.037 Proceedings applicable to cases resulting from a
 239 termination of parental rights under chapter 39.—A case in which
 240 a minor becomes available for adoption after the parental rights
 241 of each parent have been terminated by a judgment entered
 242 pursuant to chapter 39 shall be governed by s. 39.812 and this
 243 chapter. Adoption proceedings initiated under chapter 39 are
 244 exempt from the following provisions of this chapter:

245 requirement for search of the Florida Putative Father Registry
 246 provided in s. 63.054(7), if a search was previously completed
 247 and documentation of the search is contained in the case file;
 248 disclosure requirements for the adoption entity provided in s.
 249 63.085(1); general provisions governing termination of parental
 250 rights pending adoption provided in s. 63.087; notice and
 251 service provisions governing termination of parental rights
 252 pending adoption provided in s. 63.088; and procedures for
 253 terminating parental rights pending adoption provided in s.
 254 63.089.

255 Section 4. Subsections (2) through (4) of section 63.039,
 256 Florida Statutes, are renumbered as subsections (3) through (5),
 257 respectively, and a new subsection (2) is added to that section
 258 to read:

259 63.039 Duty of adoption entity to prospective adoptive
 260 parents; sanctions.—

261 (2) With the exception of an adoption by a relative or

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262 stepparent, all adoptions of minor children require the use of
 263 an adoption entity that will assume the responsibilities
 264 provided in this section.

265 Section 5. Subsections (1), (2), (3), (4), (7), (8), and
 266 (9) of section 63.0423, Florida Statutes, are amended to read:
 267 63.0423 Procedures with respect to surrendered infants.—

268 (1) Upon entry of final judgment terminating parental
 269 rights, an adoption entity ~~A licensed child-placing agency~~ that
 270 takes physical custody of an infant surrendered at a hospital,
 271 emergency medical services station, or fire station pursuant to
 272 s. 383.50 assumes ~~shall assume~~ responsibility for the all
 273 ~~medical costs~~ and all other costs associated with the emergency
 274 services and care of the surrendered infant from the time the
 275 adoption entity ~~licensed child-placing agency~~ takes physical
 276 custody of the surrendered infant.

277 (2) The adoption entity ~~licensed child-placing agency~~ shall
 278 immediately seek an order from the circuit court for emergency
 279 custody of the surrendered infant. The emergency custody order
 280 shall remain in effect until the court orders preliminary
 281 approval of placement of the surrendered infant in the
 282 prospective home, at which time the prospective adoptive parents
 283 become guardians pending termination of parental rights and
 284 finalization of adoption or until the court orders otherwise.
 285 The guardianship of the prospective adoptive parents shall
 286 remain subject to the right of the adoption entity ~~licensed~~
 287 ~~child-placing agency~~ to remove the surrendered infant from the
 288 placement during the pendency of the proceedings if such removal
 289 is deemed by the adoption entity ~~licensed child-placing agency~~
 290 to be in the best interests ~~interest~~ of the child. The adoption

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291 ~~entity licensed child placing agency~~ may immediately seek to
292 place the surrendered infant in a prospective adoptive home.

293 (3) The ~~adoption entity licensed child placing agency~~ that
294 takes physical custody of the surrendered infant shall, within
295 24 hours thereafter, request assistance from law enforcement
296 officials to investigate and determine, through the Missing
297 Children Information Clearinghouse, the National Center for
298 Missing and Exploited Children, and any other national and state
299 resources, whether the surrendered infant is a missing child.

300 (4) The parent who surrenders the infant in accordance with
301 s. 383.50 is presumed to have consented to termination of
302 parental rights, and express consent is not required. Except
303 when there is actual or suspected child abuse or neglect, the
304 adoption entity may licensed child placing agency shall not
305 attempt to pursue, search for, or notify that parent as provided
306 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
307 section, an infant who tests positive for illegal drugs,
308 narcotic prescription drugs, alcohol, or other substances, but
309 shows no other signs of child abuse or neglect, shall be placed
310 in the custody of an adoption entity. This provision does not
311 eliminate the reporting requirement under s. 383.50(7). When the
312 department is contacted regarding an infant properly surrendered
313 under this section and s. 383.50, the department shall provide
314 instruction to contact an adoption entity and may not take
315 custody of the infant unless reasonable efforts to contact an
316 adoption entity to accept the infant have not been successful.

317 (7) If a claim of parental rights of a surrendered infant
318 is made before the judgment to terminate parental rights is
319 entered, the circuit court may hold the action for termination

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320 of parental rights ~~pending subsequent adoption~~ in abeyance for a
321 period of time not to exceed 60 days.

322 (a) The court may order scientific testing to determine
323 maternity or paternity at the expense of the parent claiming
324 parental rights.

325 (b) The court shall appoint a guardian ad litem for the
326 surrendered infant and order whatever investigation, home
327 evaluation, and psychological evaluation are necessary to
328 determine what is in the best interests ~~interest~~ of the
329 surrendered infant.

330 (c) The court may not terminate parental rights solely on
331 the basis that the parent left the infant at a hospital,
332 emergency medical services station, or fire station in
333 accordance with s. 383.50.

334 (d) The court shall enter a judgment with written findings
335 of fact and conclusions of law.

336 (8) Within 7 business days after recording the judgment,
337 the clerk of the court shall mail a copy of the judgment to the
338 department, the petitioner, and any person ~~the persons~~ whose
339 consent ~~was~~ were required, if known. The clerk shall execute a
340 certificate of each mailing.

341 (9) (a) A judgment terminating parental rights pending
342 adoption is voidable, and any later judgment of adoption of that
343 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
344 court finds that a person knowingly gave false information that
345 prevented the ~~birth~~ parent from timely making known his or her
346 desire to assume parental responsibilities toward the minor or
347 from exercising his or her parental rights. A motion under this
348 subsection must be filed with the court originally entering the

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349 judgment. The motion must be filed within a reasonable time but
350 not later than 1 year after the entry of the judgment
351 terminating parental rights.

352 (b) No later than 30 days after the filing of a motion
353 under this subsection, the court shall conduct a preliminary
354 hearing to determine what contact, if any, will be permitted
355 between a ~~birth~~ parent and the child pending resolution of the
356 motion. Such contact may be allowed only if it is requested by a
357 parent who has appeared at the hearing and the court determines
358 that it is in the best interests ~~interest~~ of the child. If the
359 court orders contact between a ~~birth~~ parent and the child, the
360 order must be issued in writing as expeditiously as possible and
361 must state with specificity any provisions regarding contact
362 with persons other than those with whom the child resides.

363 (c) ~~At the preliminary hearing, The court, upon the motion~~
364 ~~of any party or upon its own motion, may not order scientific~~
365 ~~testing to determine the paternity or maternity of the minor~~
366 ~~until such time as the court determines that a previously~~
367 ~~entered judgment terminating the parental rights of that parent~~
368 ~~is voidable pursuant to paragraph (a), unless all parties agree~~
369 ~~that such testing is in the best interests of the child if the~~
370 ~~person seeking to set aside the judgment is alleging to be the~~
371 ~~child's birth parent but has not previously been determined by~~
372 ~~legal proceedings or scientific testing to be the birth parent.~~
373 Upon the filing of test results establishing that person's
374 maternity or paternity of the surrendered infant, the court may
375 order visitation only if it appears to be as it deems
376 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

377 (d) Within 45 days after the preliminary hearing, the court

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378 shall conduct a final hearing on the motion to set aside the
379 judgment and shall enter its written order as expeditiously as
380 possible thereafter.

381 Section 6. Subsection (1) of section 63.0425, Florida
382 Statutes, is amended to read:

383 63.0425 Grandparent's right to notice.—

384 (1) If a child has lived with a grandparent for at least 6
385 continuous months within the 24-month period immediately
386 preceding the filing of a petition for termination of parental
387 rights pending adoption, the adoption entity shall provide
388 notice to that grandparent of the hearing on the petition.

389 Section 7. Section 63.0427, Florida Statutes, is amended to
390 read:

391 63.0427 Agreements for Adopted minor's right to continued
392 communication or contact between adopted child and ~~with~~
393 siblings, parents, and other relatives.—

394 (1) A child whose parents have had their parental rights
395 terminated and whose custody has been awarded to the department
396 pursuant to s. 39.811, and who is the subject of a petition for
397 adoption under this chapter, shall have the right to have the
398 court consider the appropriateness of postadoption communication
399 or contact, including, but not limited to, visits, written
400 correspondence, or telephone calls, with his or her siblings or,
401 upon agreement of the adoptive parents, with the parents who
402 have had their parental rights terminated or other specified
403 biological relatives. The court shall consider the following in
404 making such determination:

405 (a) Any orders of the court pursuant to s. 39.811(7).

406 (b) Recommendations of the department, the foster parents

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407 if other than the adoptive parents, and the guardian ad litem.

408 (c) Statements of the prospective adoptive parents.

409 (d) Any other information deemed relevant and material by
410 the court.

411

412 If the court determines that the child's best interests will be
413 served by postadoption communication or contact, the court shall
414 so order, stating the nature and frequency of for the
415 communication or contact. This order shall be made a part of the
416 final adoption order, but ~~in no event shall~~ the continuing
417 validity of the adoption may not be contingent upon such
418 postadoption communication or contact ~~and, nor shall~~ the ability
419 of the adoptive parents and child to change residence within or
420 outside the State of Florida may not be impaired by such
421 communication or contact.

422 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
423 adoptive parent may, at any time, petition for review of a
424 communication or contact order entered pursuant to subsection
425 (1), if the adoptive parent believes that the best interests of
426 the adopted child are being compromised, and the court may shall
427 ~~have authority to~~ order the communication or contact to be
428 terminated or modified, as the court deems to be in the best
429 interests of the adopted child; ~~however, the court may not~~
430 increase contact between the adopted child and siblings, birth
431 parents, or other relatives without the consent of the adoptive
432 parent or parents. As part of the review process, the court may
433 order the parties to engage in mediation. The department shall
434 not be required to be a party to such review.

435 (3) Prospective adoptive parents may enter into an

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436 agreement for contact between the child to be adopted and the
437 birth parent, other relative, or previous foster parent of the
438 child to be adopted. Such contact may include visits, written
439 correspondence, telephone contact, exchange of photographs, or
440 other similar types of contact. The agreement is enforceable by
441 the court only if:

442 (a) The agreement was in writing and was submitted to the
443 court.

444 (b) The adoptive parents have agreed to the terms of the
445 contact agreement.

446 (c) The court finds the contact to be in the best interests
447 of the child.

448 (d) The child, if 12 years of age or older, has agreed to
449 the contact outlined in the agreement.

450 (4) All parties must acknowledge that a dispute regarding
451 the contact agreement does not affect the validity or finality
452 of the adoption and that a breach of the agreement may not be
453 grounds to set aside the adoption or otherwise impact the
454 validity or finality of the adoption in any way.

455 (5) An adoptive parent may terminate the contact between
456 the child and the birth parent, other relative, or foster parent
457 if the adoptive parent reasonably believes that the contact is
458 detrimental to the best interests of the child.

459 (6) In order to terminate the agreement for contact, the
460 adoptive parent must file a notice of intent to terminate the
461 contact agreement with the court that initially approved the
462 contact agreement, and provide a copy of the notice to the
463 adoption entity that placed the child, if any, and to the birth
464 parent, other relative, or foster parent of the child who is a

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465 party to the agreement, outlining the reasons for termination of
 466 the agreement.

467 (7) If appropriate under the circumstances of the case, the
 468 court may order the parties to participate in mediation to
 469 attempt to resolve the issues with the contact agreement. The
 470 mediation shall be conducted pursuant to s. 61.183. The
 471 petitioner shall be responsible for payment for the services of
 472 the mediator.

473 (8) The court may modify the terms of the agreement in
 474 order to serve the best interests of the child, but may not
 475 increase the amount or type of contact unless the adoptive
 476 parents agree to the increase in contact or change in the type
 477 of contact.

478 (9) An agreement for contact entered into under this
 479 subsection is enforceable even if it does not fully disclose the
 480 identity of the parties to the agreement or if identifying
 481 information has been redacted from the agreement.

482 Section 8. Subsections (1), (2), (3), and (6) of section
 483 63.052, Florida Statutes, are amended to read:

484 63.052 Guardians designated; proof of commitment.—

485 (1) For minors who have been placed for adoption with ~~and~~
 486 ~~permanently committed to~~ an adoption entity, other than an
 487 intermediary, such adoption entity shall be the guardian of the
 488 person of the minor and has the responsibility and authority to
 489 provide for the needs and welfare of the minor.

490 (2) For minors who have been voluntarily surrendered to an
 491 intermediary through an execution of a consent to adoption, the
 492 intermediary shall be responsible for the minor until the time a
 493 court orders preliminary approval of placement of the minor in

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494 the prospective adoptive home, after which time the prospective
 495 adoptive parents shall become guardians pending finalization of
 496 adoption, subject to the intermediary's right and responsibility
 497 to remove the child from the prospective adoptive home if the
 498 removal is deemed by the intermediary to be in the best
 499 interests ~~interest~~ of the child. The intermediary may not remove
 500 the child without a court order unless the child is in danger of
 501 imminent harm. The intermediary does not become responsible for
 502 the minor child's medical bills that were incurred before taking
 503 physical custody of the child after the execution of adoption
 504 consents. Prior to the court's entry of an order granting
 505 preliminary approval of the placement, the intermediary shall
 506 have the responsibility and authority to provide for the needs
 507 and welfare of the minor. ~~A~~ ~~No~~ minor may not ~~shall~~ be placed in
 508 a prospective adoptive home until that home has received a
 509 favorable preliminary home study, as provided in s. 63.092,
 510 completed and approved within 1 year before such placement in
 511 the prospective home. The provisions of s. 627.6578 shall remain
 512 in effect notwithstanding the guardianship provisions in this
 513 section.

514 (3) If a minor is surrendered to an adoption entity for
 515 subsequent adoption and a suitable prospective adoptive home is
 516 not available pursuant to s. 63.092 at the time the minor is
 517 surrendered to the adoption entity, the minor must be placed in
 518 a licensed foster care home, ~~or~~ with a person or family that has
 519 received a favorable preliminary home study pursuant to
 520 subsection (2), or with a relative until ~~such~~ a suitable
 521 prospective adoptive home is available.

522 (6) Unless otherwise authorized by law or ordered by the

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523 court, the department is not responsible for expenses incurred
524 by other adoption entities participating in a placement of a
525 minor.

526 Section 9. Subsections (2) and (3) of section 63.053,
527 Florida Statutes, are amended to read:

528 63.053 Rights and responsibilities of an unmarried
529 biological father; legislative findings.—

530 (2) The Legislature finds that the interests of the state,
531 the mother, the child, and the adoptive parents described in
532 this chapter outweigh the interest of an unmarried biological
533 father who does not take action in a timely manner to establish
534 and demonstrate a relationship with his child in accordance with
535 the requirements of this chapter. An unmarried biological father
536 has the primary responsibility to protect his rights and is
537 presumed to know that his child may be adopted without his
538 consent unless he strictly complies with ~~the provisions of~~ this
539 chapter and demonstrates a prompt and full commitment to his
540 parental responsibilities.

541 (3) The Legislature finds that a birth mother and a birth
542 father have a right of ~~to~~ privacy.

543 Section 10. Subsections (1), (2), (4), and (13) of section
544 63.054, Florida Statutes, are amended to read:

545 63.054 Actions required by an unmarried biological father
546 to establish parental rights; Florida Putative Father Registry.—

547 (1) In order to preserve the right to notice and consent to
548 an adoption under this chapter, an unmarried biological father
549 must, as the "registrant," file a notarized claim of paternity
550 form with the Florida Putative Father Registry maintained by the
551 Office of Vital Statistics of the Department of Health which

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552 includes confirmation of his willingness and intent to support
553 the child for whom paternity is claimed in accordance with state
554 law. The claim of paternity may be filed at any time before the
555 child's birth, but may not be filed after the date a petition is
556 filed for termination of parental rights. In each proceeding for
557 termination of parental rights, the petitioner must submit to
558 the Office of Vital Statistics a copy of the petition for
559 termination of parental rights or a document executed by the
560 clerk of the court showing the style of the case, the names of
561 the persons whose rights are sought to be terminated, and the
562 date and time of the filing of the petition. The Office of Vital
563 Statistics may not record a claim of paternity after the date a
564 petition for termination of parental rights is filed. The
565 failure of an unmarried biological father to file a claim of
566 paternity with the registry before the date a petition for
567 termination of parental rights is filed also bars him from
568 filing a paternity claim under chapter 742.

569 (a) An unmarried biological father is excepted from the
570 time limitations for filing a claim of paternity with the
571 registry or for filing a paternity claim under chapter 742, if:

572 1. The mother identifies him to the adoption entity as a
573 potential biological father by the date she executes a consent
574 for adoption; and

575 2. He is served with a notice of intended adoption plan
576 pursuant to s. 63.062(3) and the 30-day mandatory response date
577 is later than the date the petition for termination of parental
578 rights is filed with the court.

579 (b) If an unmarried biological father falls within the
580 exception provided by paragraph (a), the petitioner shall also

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581 submit to the Office of Vital Statistics a copy of the notice of
582 intended adoption plan and proof of service of the notice on the
583 potential biological father.

584 (c) An unmarried biological father who falls within the
585 exception provided by paragraph (a) may not file a claim of
586 paternity with the registry or a paternity claim under chapter
587 742 after the 30-day mandatory response date to the notice of
588 intended adoption plan has expired. The Office of Vital
589 Statistics may not record a claim of paternity 30 days after
590 service of the notice of intended adoption plan.

591 (2) By filing a claim of paternity form with the Office of
592 Vital Statistics, the registrant expressly consents to submit to
593 and pay for DNA testing upon the request of any party, the
594 registrant, or the adoption entity with respect to the child
595 referenced in the claim of paternity.

596 (4) Upon initial registration, or at any time thereafter,
597 the registrant may designate a physical ~~an~~ address other than
598 his residential address for sending any communication regarding
599 his registration. Similarly, upon initial registration, or at
600 any time thereafter, the registrant may designate, in writing,
601 an agent or representative to receive any communication on his
602 behalf and receive service of process. The agent or
603 representative must file an acceptance of the designation, in
604 writing, in order to receive notice or service of process. The
605 failure of the designated representative or agent of the
606 registrant to deliver or otherwise notify the registrant of
607 receipt of correspondence from the Florida Putative Father
608 Registry is at the registrant's own risk and may ~~shall~~ not serve
609 as a valid defense based upon lack of notice.

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610 (13) The filing of a claim of paternity with the Florida
611 Putative Father Registry does not excuse or waive the obligation
612 of a petitioner to comply with the requirements of s. 63.088(4)
613 for conducting a diligent search and required inquiry with
614 respect to the identity of an unmarried biological father or
615 legal father which are set forth in this chapter.

616 Section 11. Paragraph (b) of subsection (1), subsections
617 (2), (3), and (4), and paragraph (a) of subsection (8) of
618 section 63.062, Florida Statutes, are amended to read:

619 63.062 Persons required to consent to adoption; affidavit
620 of nonpaternity; waiver of venue.—

621 (1) Unless supported by one or more of the grounds
622 enumerated under s. 63.089(3), a petition to terminate parental
623 rights pending adoption may be granted only if written consent
624 has been executed as provided in s. 63.082 after the birth of
625 the minor or notice has been served under s. 63.088 to:

626 (b) The father of the minor, if:

627 1. The minor was conceived or born while the father was
628 married to the mother;

629 2. The minor is his child by adoption;

630 3. The minor has been adjudicated by the court to be his
631 child before ~~by~~ the date a petition ~~is filed~~ for termination of
632 parental rights is filed;

633 4. He has filed an affidavit of paternity pursuant to s.
634 382.013(2)(c) or he is listed on the child's birth certificate
635 before ~~by~~ the date a petition ~~is filed~~ for termination of
636 parental rights is filed; or

637 5. In the case of an unmarried biological father, he has
638 acknowledged in writing, signed in the presence of a competent

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639 witness, that he is the father of the minor, has filed such
640 acknowledgment with the Office of Vital Statistics of the
641 Department of Health within the required timeframes, and has
642 complied with the requirements of subsection (2).

643
644 The status of the father shall be determined at the time of the
645 filing of the petition to terminate parental rights and may not
646 be modified, except as otherwise provided in s. 63.0423(9) (a),
647 for purposes of his obligations and rights under this chapter by
648 acts occurring after the filing of the petition to terminate
649 parental rights.

650 (2) In accordance with subsection (1), the consent of an
651 unmarried biological father shall be necessary only if the
652 unmarried biological father has complied with the requirements
653 of this subsection.

654 (a)1. With regard to a child who is placed with adoptive
655 parents more than 6 months after the child's birth, an unmarried
656 biological father must have developed a substantial relationship
657 with the child, taken some measure of responsibility for the
658 child and the child's future, and demonstrated a full commitment
659 to the responsibilities of parenthood by providing reasonable
660 and regular financial support to the child in accordance with
661 the unmarried biological father's ability, if not prevented from
662 doing so by the person or authorized agency having lawful
663 custody of the child, and either:

664 a. Regularly visited the child at least monthly, when
665 physically and financially able to do so and when not prevented
666 from doing so by the birth mother or the person or authorized
667 agency having lawful custody of the child; or

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668 b. Maintained regular communication with the child or with
669 the person or agency having the care or custody of the child,
670 when physically or financially unable to visit the child or when
671 not prevented from doing so by the birth mother or person or
672 authorized agency having lawful custody of the child.

673 ~~2. The mere fact that an unmarried biological father~~
674 ~~expresses a desire to fulfill his responsibilities towards his~~
675 ~~child which is unsupported by acts evidencing this intent does~~
676 ~~not preclude a finding by the court that the unmarried~~
677 ~~biological father failed to comply with the requirements of this~~
678 ~~subsection.~~

679 ~~2.3.~~ An unmarried biological father who openly lived with
680 the child for at least 6 months within the 1-year period
681 following the birth of the child and immediately preceding
682 placement of the child with adoptive parents and who openly held
683 himself out to be the father of the child during that period
684 shall be deemed to have developed a substantial relationship
685 with the child and to have otherwise met the requirements of
686 this paragraph.

687 (b) With regard to a child who is ~~younger than~~ 6 months of
688 age or younger at the time the child is placed with the adoptive
689 parents, an unmarried biological father must have demonstrated a
690 full commitment to his parental responsibility by having
691 performed all of the following acts prior to the time the mother
692 executes her consent for adoption:

693 1. Filed a notarized claim of paternity form with the
694 Florida Putative Father Registry within the Office of Vital
695 Statistics of the Department of Health, which form shall be
696 maintained in the confidential registry established for that

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697 purpose and shall be considered filed when the notice is entered
698 in the registry of notices from unmarried biological fathers.

699 2. Upon service of a notice of an intended adoption plan or
700 a petition for termination of parental rights pending adoption,
701 executed and filed an affidavit in that proceeding stating that
702 he is personally fully able and willing to take responsibility
703 for the child, setting forth his plans for care of the child,
704 and agreeing to a court order of child support and a
705 contribution to the payment of living and medical expenses
706 incurred for the mother's pregnancy and the child's birth in
707 accordance with his ability to pay.

708 3. If he had knowledge of the pregnancy, paid a fair and
709 reasonable amount of the living and medical expenses incurred in
710 connection with the mother's pregnancy and the child's birth, in
711 accordance with his financial ability and when not prevented
712 from doing so by the birth mother or person or authorized agency
713 having lawful custody of the child. The responsibility of the
714 unmarried biological father to provide financial assistance to
715 the birth mother during her pregnancy and to the child after
716 birth is not abated because support is being provided to the
717 birth mother or child by the adoption entity, a prospective
718 adoptive parent, or a third party, nor does it serve as a basis
719 to excuse the birth father's failure to provide support.

720 (c) The mere fact that a father expresses a desire to
721 fulfill his responsibilities towards his child which is
722 unsupported by acts evidencing this intent does not meet the
723 requirements of this section.

724 (d)(e) The petitioner shall file with the court a
725 certificate from the Office of Vital Statistics stating that a

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726 diligent search has been made of the Florida Putative Father
727 Registry of notices from unmarried biological fathers described
728 in subparagraph (b)1. and that no filing has been found
729 pertaining to the father of the child in question or, if a
730 filing is found, stating the name of the putative father and the
731 time and date of filing. That certificate shall be filed with
732 the court prior to the entry of a final judgment of termination
733 of parental rights.

734 (e)(d) An unmarried biological father who does not comply
735 with each of the conditions provided in this subsection is
736 deemed to have waived and surrendered any rights in relation to
737 the child, including the right to notice of any judicial
738 proceeding in connection with the adoption of the child, and his
739 consent to the adoption of the child is not required.

740 (3) Pursuant to chapter 48, an adoption entity shall serve
741 a notice of intended adoption plan upon any known and locatable
742 unmarried biological father who is identified to the adoption
743 entity by the mother by the date she signs her consent for
744 adoption if the child is 6 months of age or less at the time the
745 consent is executed or who is identified by a diligent search of
746 the Florida Putative Father Registry, or upon an entity whose
747 consent is required. Service of the notice of intended adoption
748 plan is not required mandatory when the unmarried biological
749 father signs a consent for adoption or an affidavit of
750 nonpaternity or when the child is more than 6 months of age at
751 the time of the execution of the consent by the mother. The
752 notice may be served at any time before the child's birth or
753 before placing the child in the adoptive home. The recipient of
754 the notice may waive service of process by executing a waiver

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755 and acknowledging receipt of the plan. The notice of intended
 756 adoption plan must specifically state that if the unmarried
 757 biological father desires to contest the adoption plan he must,
 758 within 30 days after service, file with the court a verified
 759 response that contains a pledge of commitment to the child in
 760 substantial compliance with subparagraph (2)(b)2. and a claim of
 761 paternity form with the Office of Vital Statistics, and must
 762 provide the adoption entity with a copy of the verified response
 763 filed with the court and the claim of paternity form filed with
 764 the Office of Vital Statistics. The notice must also include
 765 instructions for submitting a claim of paternity form to the
 766 Office of Vital Statistics and the address to which the claim
 767 must be sent. If the party served with the notice of intended
 768 adoption plan is an entity whose consent is required, the notice
 769 must specifically state that the entity must file, within 30
 770 days after service, a verified response setting forth a legal
 771 basis for contesting the intended adoption plan, specifically
 772 addressing the best interests ~~interest~~ of the child.

773 (a) If the unmarried biological father or entity whose
 774 consent is required fails to timely and properly file a verified
 775 response with the court and, in the case of an unmarried
 776 biological father, a claim of paternity form with the Office of
 777 Vital Statistics, the court shall enter a default judgment
 778 against ~~the any~~ unmarried biological father or entity and the
 779 consent of that unmarried biological father or entity shall no
 780 longer be required under this chapter and shall be deemed to
 781 have waived any claim of rights to the child. To avoid an entry
 782 of a default judgment, within 30 days after receipt of service
 783 of the notice of intended adoption plan:

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784 1. The unmarried biological father must:
 785 a. File a claim of paternity with the Florida Putative
 786 Father Registry maintained by the Office of Vital Statistics;
 787 b. File a verified response with the court which contains a
 788 pledge of commitment to the child in substantial compliance with
 789 subparagraph (2)(b)2.; and
 790 c. Provide support for the birth mother and the child.
 791 2. The entity whose consent is required must file a
 792 verified response setting forth a legal basis for contesting the
 793 intended adoption plan, specifically addressing the best
 794 interests ~~interest~~ of the child.
 795 (b) If the mother identifies a potential unmarried
 796 biological father within the timeframes required by the statute,
 797 whose location is unknown, the adoption entity shall conduct a
 798 diligent search pursuant to s. 63.088. If, upon completion of a
 799 diligent search, the potential unmarried biological father's
 800 location remains unknown and a search of the Florida Putative
 801 Father Registry fails to reveal a match, the adoption entity
 802 shall request in the petition for termination of parental rights
 803 pending adoption that the court declare the diligent search to
 804 be in compliance with s. 63.088, that the adoption entity has no
 805 further obligation to provide notice to the potential unmarried
 806 biological father, and that the potential unmarried biological
 807 father's consent to the adoption is not required.
 808 (4) Any person whose consent is required under paragraph
 809 (1)(b), or any other man, may execute an irrevocable affidavit
 810 of nonpaternity in lieu of a consent under this section and by
 811 doing so waives notice to all court proceedings after the date
 812 of execution. An affidavit of nonpaternity must be executed as

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813 provided in s. 63.082. The affidavit of nonpaternity may be
 814 executed prior to the birth of the child. The person executing
 815 the affidavit must receive disclosure under s. 63.085 prior to
 816 signing the affidavit. For purposes of this chapter, an
 817 affidavit of nonpaternity is sufficient if it contains a
 818 specific denial of parental obligations and does not need to
 819 deny the existence of a biological relationship.

820 (8) A petition to adopt an adult may be granted if:

821 (a) Written consent to adoption has been executed by the
 822 adult and the adult's spouse, if any, unless the spouse's
 823 consent is waived by the court for good cause.

824 Section 12. Subsection (2) of section 63.063, Florida
 825 Statutes, is amended to read:

826 63.063 Responsibility of parents for actions; fraud or
 827 misrepresentation; contesting termination of parental rights and
 828 adoption.—

829 (2) Any person injured by a fraudulent representation or
 830 action in connection with an adoption may pursue civil or
 831 criminal penalties as provided by law. A fraudulent
 832 representation is not a defense to compliance with the
 833 requirements of this chapter and is not a basis for dismissing a
 834 petition for termination of parental rights or a petition for
 835 adoption, for vacating an adoption decree, or for granting
 836 custody to the offended party. Custody and adoption
 837 determinations must be based on the best interests interest of
 838 the child in accordance with s. 61.13.

839 Section 13. Paragraph (d) of subsection (1), paragraphs (c)
 840 and (d) of subsection (3), paragraphs (a), (d), and (e) of
 841 subsection (4), and subsections (6) and (7) of section 63.082,

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842 Florida Statutes, are amended to read:

843 63.082 Execution of consent to adoption or affidavit of
 844 nonpaternity; family social and medical history; revocation
 845 ~~withdrawal~~ of consent.—

846 (1)

847 (d) The notice and consent provisions of this chapter as
 848 they relate to the father birth of a child ~~or to legal fathers~~
 849 do not apply in cases in which the child is conceived as a
 850 result of a violation of the criminal laws of this or another
 851 state or country, including, but not limited to, sexual battery,
 852 unlawful sexual activity with certain minors under s. 794.05,
 853 lewd acts perpetrated upon a minor, or incest. A criminal
 854 conviction is not required for the court to find that the child
 855 was conceived as a result of a violation of the criminal laws of
 856 this state or another state or country.

857 (3)

858 (c) If any person who is required to consent is unavailable
 859 because the person cannot be located, an the petition to
 860 ~~terminate parental rights pending adoption must be accompanied~~
 861 ~~by the affidavit of diligent search required under s. 63.088~~
 862 shall be filed.

863 (d) If any person who is required to consent is unavailable
 864 because the person is deceased, the petition to terminate
 865 parental rights pending adoption must be accompanied by a
 866 certified copy of the death certificate. In an adoption of a
 867 stepchild or a relative, the certified copy of the death
 868 certificate of the person whose consent is required may must be
 869 attached to the petition for adoption if a separate petition for
 870 termination of parental rights is not being filed.

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871 (4) (a) An affidavit of nonpaternity may be executed before
 872 the birth of the minor; however, the consent to an adoption may
 873 ~~shall~~ not be executed before the birth of the minor except in a
 874 preplanned adoption pursuant to s. 63.213.

875 (d) The consent to adoption or the affidavit of
 876 nonpaternity must be signed in the presence of two witnesses and
 877 be acknowledged before a notary public who is not signing as one
 878 of the witnesses. The notary public must legibly note on the
 879 consent or the affidavit the date and time of execution. The
 880 witnesses' names must be typed or printed underneath their
 881 signatures. The witnesses' home or business addresses must be
 882 included. The person who signs the consent or the affidavit has
 883 the right to have at least one of the witnesses be an individual
 884 who does not have an employment, professional, or personal
 885 relationship with the adoption entity or the prospective
 886 adoptive parents. The adoption entity must give reasonable
 887 advance notice to the person signing the consent or affidavit of
 888 the right to select a witness of his or her own choosing. The
 889 person who signs the consent or affidavit must acknowledge in
 890 writing on the consent or affidavit that such notice was given
 891 and indicate the witness, if any, who was selected by the person
 892 signing the consent or affidavit. The adoption entity must
 893 include its name, address, and telephone number on the consent
 894 to adoption or affidavit of nonpaternity.

895 (e) A consent to adoption being executed by the birth
 896 parent must be in at least 12-point boldfaced type and shall
 897 contain the following recitation of rights in substantially the
 898 following form:

899 CONSENT TO ADOPTION

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900
 901 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
 902 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
 903 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
 904 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
 905 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
 906 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
 907 WITNESSES YOU SELECTED, IF ANY.

908
 909 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
 910 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
 911 CONSENT:

- 912
 913 1. CONSULT WITH AN ATTORNEY;
 914 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
 915 LEGALLY PROHIBITED;
 916 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
 917 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE CHILD;
 918 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED;
 919 AND
 920 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
 921 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE ADOPTION.

922
 923 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO
 924 YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
 925 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
 926 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
 927 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
 928 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE

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929 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
 930 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
 931 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
 932 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
 933 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
 934 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
 935 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
 936 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
 937 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
 938 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
 939 DURESS.

941 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
 942 AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

- 943
- 944 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
 - 945 YOU WISH TO WITHDRAW YOUR CONSENT; AND
 - 946 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR
 - 947 DURESS.

948

949 This statement of rights is not required for the adoption of a
 950 relative, an adult, a stepchild, or a child older than 6 months
 951 of age. A consent form for the adoption of a child older than 6
 952 months of age at the time of the execution of consent must
 953 contain a statement outlining the revocation rights provided in
 954 paragraph (c).

955 (6) (a) If a parent executes a consent for placement of a
 956 minor with an adoption entity or qualified prospective adoptive
 957 parents and the minor child is in the custody of the department,

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958 but parental rights have not yet been terminated, the adoption
 959 consent is valid, binding, and enforceable by the court.

960 (b) Upon execution of the consent of the parent, the
 961 adoption entity shall be permitted to ~~may~~ intervene in the
 962 dependency case as a party in interest and must provide the
 963 court that acquired ~~having~~ jurisdiction over the minor, pursuant
 964 to the shelter or dependency petition filed by the department, a
 965 copy of the preliminary home study of the prospective adoptive
 966 parents and any other evidence of the suitability of the
 967 placement. The preliminary home study must be maintained with
 968 strictest confidentiality within the dependency court file and
 969 the department's file. A preliminary home study must be provided
 970 to the court in all cases in which an adoption entity has
 971 intervened pursuant to this section. Unless the court has
 972 concerns regarding the qualifications of the home study
 973 provider, or concerns that the home study may not be adequate to
 974 determine the best interests of the child, the home study
 975 provided by the adoption entity shall be deemed to be sufficient
 976 and no additional home study needs to be performed by the
 977 department.

978 (c) If an adoption entity files a motion to intervene in
 979 the dependency case in accordance with this chapter, the
 980 dependency court shall promptly grant a hearing to determine
 981 whether the adoption entity has filed the required documents to
 982 be permitted to intervene and whether a change of placement of
 983 the child is appropriate.

984 (d) ~~(e)~~ Upon a determination by the court that the
 985 prospective adoptive parents are properly qualified to adopt the
 986 minor child and that the adoption appears to be in the best

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987 interests ~~interest~~ of the minor child, the court shall
 988 immediately order the transfer of custody of the minor child to
 989 the prospective adoptive parents, under the supervision of the
 990 adoption entity. The adoption entity shall thereafter provide
 991 monthly supervision reports to the department until finalization
 992 of the adoption.

993 ~~(e)(d)~~ In determining whether the best interests ~~interest~~
 994 of the child are ~~is~~ served by transferring the custody of the
 995 minor child to the prospective adoptive parent selected by the
 996 parent, the court shall consider the rights of the parent to
 997 determine an appropriate placement for the child, the permanency
 998 offered, the child's bonding with any potential adoptive home
 999 that the child has been residing in, and the importance of
 1000 maintaining sibling relationships, if possible.

1001 (7) If a person is seeking to revoke ~~withdraw~~ consent for a
 1002 child older than 6 months of age ~~who has been placed with~~
 1003 ~~prospective adoptive parents:~~

1004 (a) The person seeking to revoke ~~withdraw~~ consent must, in
 1005 accordance with paragraph (4)(c), notify the adoption entity in
 1006 writing by certified mail, return receipt requested, within 3
 1007 business days after execution of the consent. As used in this
 1008 subsection, the term "business day" means any day on which the
 1009 United States Postal Service accepts certified mail for
 1010 delivery.

1011 (b) Upon receiving timely written notice from a person
 1012 whose consent to adoption is required of that person's desire to
 1013 revoke ~~withdraw~~ consent, the adoption entity must contact the
 1014 prospective adoptive parent to arrange a time certain for the
 1015 adoption entity to regain physical custody of the minor, unless,

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1016 upon a motion for emergency hearing by the adoption entity, the
 1017 court determines in written findings that placement of the minor
 1018 with the person who had legal or physical custody of the child
 1019 immediately before the child was placed for adoption may
 1020 endanger the minor or that the person who desires to revoke
 1021 ~~withdraw~~ consent is not required to consent to the adoption, has
 1022 been determined to have abandoned the child, or is otherwise
 1023 subject to a determination that the person's consent is waived
 1024 under this chapter.

1025 (c) If the court finds that the placement may endanger the
 1026 minor, the court shall enter an order continuing the placement
 1027 of the minor with the prospective adoptive parents pending
 1028 further proceedings if they desire continued placement. If the
 1029 prospective adoptive parents do not desire continued placement,
 1030 the order must include, but need not be limited to, a
 1031 determination of whether temporary placement in foster care,
 1032 with the person who had legal or physical custody of the child
 1033 immediately before placing the child for adoption, or with a
 1034 relative is in the best interests ~~interest~~ of the child and
 1035 whether an investigation by the department is recommended.

1036 (d) If the person revoking ~~withdrawing~~ consent claims to be
 1037 the father of the minor but has not been established to be the
 1038 father by marriage, court order, or scientific testing, the
 1039 court may order scientific paternity testing and reserve ruling
 1040 on removal of the minor until the results of such testing have
 1041 been filed with the court.

1042 (e) The adoption entity must return the minor within 3
 1043 business days after timely and proper notification of the
 1044 revocation ~~withdrawal~~ of consent or after the court determines

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1045 that revocation ~~withdrawal~~ is timely and in accordance with the
 1046 requirements of this chapter ~~valid and binding~~ upon
 1047 consideration of an emergency motion, as filed pursuant to
 1048 paragraph (b), to the physical custody of the person revoking
 1049 ~~withdrawing~~ consent or the person directed by the court. If the
 1050 person seeking to revoke ~~withdraw~~ consent claims to be the
 1051 father of the minor but has not been established to be the
 1052 father by marriage, court order, or scientific testing, the
 1053 adoption entity may return the minor to the care and custody of
 1054 the mother, if she desires such placement and she is not
 1055 otherwise prohibited by law from having custody of the child.

1056 (f) Following the revocation period ~~for withdrawal of~~
 1057 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
 1058 ~~child with the prospective adoptive parents, whichever occurs~~
 1059 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
 1060 finds that the consent was obtained by fraud or duress.

1061 (g) An affidavit of nonpaternity may be set aside ~~withdrawn~~
 1062 only if the court finds that the affidavit was obtained by fraud
 1063 or duress.

1064 (h) If the consent of one parent is set aside or revoked in
 1065 accordance with this chapter, any other consents executed by the
 1066 other parent or a third party whose consent is required for the
 1067 adoption of the child may not be used by the parent whose
 1068 consent was revoked or set aside to terminate or diminish the
 1069 rights of the other parent or third party whose consent was
 1070 required for the adoption of the child.

1071 Section 14. Subsection (1) and paragraph (a) of subsection
 1072 (2) of section 63.085, Florida Statutes, are amended, and
 1073 paragraph (c) is added to subsection (2) of that section, to

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1074 read:

1075 63.085 Disclosure by adoption entity.—

1076 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE
 1077 PARENTS.—Within 14 days after a person seeking to adopt a minor
 1078 or a person seeking to place a minor for adoption contacts an
 1079 adoption entity in person or provides the adoption entity with a
 1080 mailing address, the entity must provide a written disclosure
 1081 statement to that person if the entity agrees or continues to
 1082 work with the person. The adoption entity shall also provide the
 1083 written disclosure to the parent who did not initiate contact
 1084 with the adoption entity within 14 days after that parent is
 1085 identified and located. For purposes of providing the written
 1086 disclosure, a person is considered to be seeking to place a
 1087 minor for adoption if that person has sought information or
 1088 advice from the adoption entity regarding the option of adoptive
 1089 placement. The written disclosure statement must be in
 1090 substantially the following form:

1091 ADOPTION DISCLOSURE

1092 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL
 1093 PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR
 1094 FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
 1095 ADOPTION UNDER FLORIDA LAW:
 1096

1097 1. The name, address, and telephone number of the adoption
 1098 entity providing this disclosure is:

1099 Name:

1100 Address:

1101 Telephone Number:
1102

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1103 2. The adoption entity does not provide legal
1104 representation or advice to parents or anyone signing a consent
1105 for adoption or affidavit of nonpaternity, and parents have the
1106 right to consult with an attorney of their own choosing to
1107 advise them.

1108 3. With the exception of an adoption by a stepparent or
1109 relative, a child cannot be placed into a prospective adoptive
1110 home unless the prospective adoptive parents have received a
1111 favorable preliminary home study, including criminal and child
1112 abuse clearances.

1113 4. A valid consent for adoption may not be signed by the
1114 birth mother until 48 hours after the birth of the child, or the
1115 day the birth mother is notified, in writing, that she is fit
1116 for discharge from the licensed hospital or birth center. Any
1117 man may sign a valid consent for adoption at any time after the
1118 birth of the child.

1119 5. A consent for adoption signed before the child attains
1120 the age of 6 months is binding and irrevocable from the moment
1121 it is signed unless it can be proven in court that the consent
1122 was obtained by fraud or duress. A consent for adoption signed
1123 after the child attains the age of 6 months is valid from the
1124 moment it is signed; however, it may be revoked up to 3 business
1125 days after it was signed.

1126 6. A consent for adoption is not valid if the signature of
1127 the person who signed the consent was obtained by fraud or
1128 duress.

1129 7. An unmarried biological father must act immediately in
1130 order to protect his parental rights. Section 63.062, Florida
1131 Statutes, prescribes that any father seeking to establish his

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1132 right to consent to the adoption of his child must file a claim
1133 of paternity with the Florida Putative Father Registry
1134 maintained by the Office of Vital Statistics of the Department
1135 of Health by the date a petition to terminate parental rights is
1136 filed with the court, or within 30 days after receiving service
1137 of a Notice of Intended Adoption Plan. If he receives a Notice
1138 of Intended Adoption Plan, he must file a claim of paternity
1139 with the Florida Putative Father Registry, file a parenting plan
1140 with the court, and provide financial support to the mother or
1141 child within 30 days following service. An unmarried biological
1142 father's failure to timely respond to a Notice of Intended
1143 Adoption Plan constitutes an irrevocable legal waiver of any and
1144 all rights that the father may have to the child. A claim of
1145 paternity registration form for the Florida Putative Father
1146 Registry may be obtained from any local office of the Department
1147 of Health, Office of Vital Statistics, the Department of
1148 Children and Families, the Internet websites for these agencies,
1149 and the offices of the clerks of the Florida circuit courts. The
1150 claim of paternity form must be submitted to the Office of Vital
1151 Statistics, Attention: Adoption Unit, P.O. Box 210,
1152 Jacksonville, FL 32231.

1153 8. There are alternatives to adoption, including foster
1154 care, relative care, and parenting the child. There may be
1155 services and sources of financial assistance in the community
1156 available to parents if they choose to parent the child.

1157 9. A parent has the right to have a witness of his or her
1158 choice, who is unconnected with the adoption entity or the
1159 adoptive parents, to be present and witness the signing of the
1160 consent or affidavit of nonpaternity.

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1161 10. A parent 14 years of age or younger must have a parent,
 1162 legal guardian, or court-appointed guardian ad litem to assist
 1163 and advise the parent as to the adoption plan and to witness
 1164 consent.

1165 11. A parent has a right to receive supportive counseling
 1166 from a counselor, social worker, physician, clergy, or attorney.

1167 12. The payment of living or medical expenses by the
 1168 prospective adoptive parents before the birth of the child does
 1169 not, in any way, obligate the parent to sign the consent for
 1170 adoption.

1171

1172 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1173 (a) At the time that an adoption entity is responsible for
 1174 selecting prospective adoptive parents for a born or unborn
 1175 child whose parents are seeking to place the child for adoption
 1176 or whose rights were terminated pursuant to chapter 39, the
 1177 adoption entity must provide the prospective adoptive parents
 1178 with information concerning the background of the child to the
 1179 extent such information is disclosed to the adoption entity by
 1180 the parents, legal custodian, or the department. This subsection
 1181 applies only if the adoption entity identifies the prospective
 1182 adoptive parents and supervises the ~~physical~~ placement of the
 1183 child in the prospective adoptive parents' home. If any
 1184 information cannot be disclosed because the records custodian
 1185 failed or refused to produce the background information, the
 1186 adoption entity has a duty to provide the information if it
 1187 becomes available. An individual or entity contacted by an
 1188 adoption entity to obtain the background information must
 1189 release the requested information to the adoption entity without

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1190 the necessity of a subpoena or a court order. In all cases, the
 1191 prospective adoptive parents must receive all available
 1192 information by the date of the final hearing on the petition for
 1193 adoption. The information to be disclosed includes:

1194 1. A family social and medical history form completed
 1195 pursuant to s. 63.162(6).

1196 2. The biological mother's medical records documenting her
 1197 prenatal care and the birth and delivery of the child.

1198 3. A complete set of the child's medical records
 1199 documenting all medical treatment and care since the child's
 1200 birth and before placement.

1201 4. All mental health, psychological, and psychiatric
 1202 records, reports, and evaluations concerning the child before
 1203 placement.

1204 5. The child's educational records, including all records
 1205 concerning any special education needs of the child before
 1206 placement.

1207 6. Records documenting all incidents that required the
 1208 department to provide services to the child, including all
 1209 orders of adjudication of dependency or termination of parental
 1210 rights issued pursuant to chapter 39, any case plans drafted to
 1211 address the child's needs, all protective services
 1212 investigations identifying the child as a victim, and all
 1213 guardian ad litem reports filed with the court concerning the
 1214 child.

1215 7. Written information concerning the availability of
 1216 adoption subsidies for the child, if applicable.

1217 (c) If the prospective adoptive parents waive the receipt
 1218 of any of the records described in paragraph (a), a copy of the

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1219 written notification of the waiver to the adoption entity shall
 1220 be filed with the court.

1221 Section 15. Subsection (6) of section 63.087, Florida
 1222 Statutes, is amended to read:

1223 63.087 Proceeding to terminate parental rights pending
 1224 adoption; general provisions.—

1225 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
 1226 petition or any pleading requiring an answer must be filed in
 1227 accordance with the Florida Family Law Rules of Procedure.
 1228 Failure to file a written response to the petition constitutes
 1229 grounds upon which the court may terminate parental rights.
 1230 Failure to personally appear at the hearing constitutes grounds
 1231 upon which the court may terminate parental rights. Any person
 1232 present at the hearing to terminate parental rights pending
 1233 adoption whose consent to adoption is required under s. 63.062
 1234 must:

1235 (a) Be advised by the court that he or she has a right to
 1236 ask that the hearing be reset for a later date so that the
 1237 person may consult with an attorney; and

1238 (b) Be given an opportunity to admit or deny the
 1239 allegations in the petition.

1240 Section 16. Subsection (4) of section 63.088, Florida
 1241 Statutes, is amended to read:

1242 63.088 Proceeding to terminate parental rights pending
 1243 adoption; notice and service; diligent search.—

1244 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
 1245 63.087, the court shall conduct an inquiry of the person who is
 1246 placing the minor for adoption and of any relative or person
 1247 having legal custody of the minor who is present at the hearing

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1248 and likely to have the following information regarding the
 1249 identity of:

1250 (a) Any man to whom the mother of the minor was married at
 1251 any time when conception of the minor may have occurred or at
 1252 the time of the birth of the minor;

1253 (b) Any man who has filed an affidavit of paternity
 1254 pursuant to s. 382.013(2)(c) before the date that a petition for
 1255 termination of parental rights is filed with the court;

1256 (c) Any man who has adopted the minor;

1257 (d) Any man who has been adjudicated by a court as the
 1258 father of the minor child before the date a petition for
 1259 termination of parental rights is filed with the court; and

1260 (e) Any man whom the mother identified to the adoption
 1261 entity as a potential biological father before the date she
 1262 signed the consent for adoption.

1263
 1264 The information sought under this subsection may be provided to
 1265 the court in the form of a sworn affidavit by a person having
 1266 personal knowledge of the facts, addressing each inquiry
 1267 enumerated in this subsection, except that, if the inquiry
 1268 identifies a father under paragraph (a), paragraph (b), ~~or~~
 1269 paragraph (c), or paragraph (d), the inquiry may not continue
 1270 further. The inquiry required under this subsection may be
 1271 conducted before the birth of the minor.

1272 Section 17. Paragraph (d) of subsection (3), paragraph (b)
 1273 of subsection (4), and subsections (5) and (7) of section
 1274 63.089, Florida Statutes, are amended to read:

1275 63.089 Proceeding to terminate parental rights pending
 1276 adoption; hearing; grounds; dismissal of petition; judgment.—

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1277 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
 1278 ADOPTION.—The court may enter a judgment terminating parental
 1279 rights pending adoption if the court determines by clear and
 1280 convincing evidence, supported by written findings of fact, that
 1281 each person whose consent to adoption is required under s.
 1282 63.062:

1283 (d) Has been properly served notice of the proceeding in
 1284 accordance with the requirements of this chapter and has failed
 1285 to file a written answer or personally appear at the evidentiary
 1286 hearing resulting in the judgment terminating parental rights
 1287 pending adoption;

1288 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 1289 resulting in a termination of parental rights must be based upon
 1290 clear and convincing evidence that a parent or person having
 1291 legal custody has abandoned the child in accordance with the
 1292 definition contained in s. 63.032. A finding of abandonment may
 1293 also be based upon emotional abuse or a refusal to provide
 1294 reasonable financial support, when able, to a birth mother
 1295 during her pregnancy.

1296 (b) The child has been abandoned when the parent of a child
 1297 is incarcerated on or after October 1, 2001, in a federal,
 1298 state, or county correctional institution and:

1299 1. The period of time for which the parent has been or is
 1300 expected to be incarcerated will constitute a significant
 1301 portion of the child's minority. In determining whether the
 1302 period of time is significant, the court shall consider the
 1303 child's age and the child's need for a permanent and stable
 1304 home. The period of time begins on the date that the parent
 1305 enters into incarceration;

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1306 2. The incarcerated parent has been determined by a court
 1307 of competent jurisdiction to be a violent career criminal as
 1308 defined in s. 775.084, a habitual violent felony offender as
 1309 defined in s. 775.084, convicted of child abuse as defined in s.
 1310 827.03, or a sexual predator as defined in s. 775.21; has been
 1311 convicted of first degree or second degree murder in violation
 1312 of s. 782.04 or a sexual battery that constitutes a capital,
 1313 life, or first degree felony violation of s. 794.011; or has
 1314 been convicted of a substantially similar offense in another
 1315 jurisdiction. As used in this section, the term "substantially
 1316 similar offense" means any offense that is substantially similar
 1317 in elements and penalties to one of those listed in this
 1318 subparagraph, and that is in violation of a law of any other
 1319 jurisdiction, whether that of another state, the District of
 1320 Columbia, the United States or any possession or territory
 1321 thereof, or any foreign jurisdiction; or

1322 3. The court determines by clear and convincing evidence
 1323 that continuing the parental relationship with the incarcerated
 1324 parent would be harmful to the child and, for this reason,
 1325 termination of the parental rights of the incarcerated parent is
 1326 in the best interests ~~interest~~ of the child.

1327 (5) DISMISSAL OF PETITION.—If the court does not find by
 1328 clear and convincing evidence that parental rights of a parent
 1329 should be terminated pending adoption, the court must dismiss
 1330 the petition and that parent's parental rights that were the
 1331 subject of such petition shall remain in full force under the
 1332 law. The order must include written findings in support of the
 1333 dismissal, including findings as to the criteria in subsection
 1334 (4) if rejecting a claim of abandonment.

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1335 (a) Parental rights may not be terminated based upon a
 1336 consent that the court finds has been timely ~~revoked~~ ~~withdrawn~~
 1337 under s. 63.082 or a consent to adoption or affidavit of
 1338 nonpaternity that the court finds was obtained by fraud or
 1339 duress.

1340 (b) The court must enter an order based upon written
 1341 findings providing for the placement of the minor, but the court
 1342 may not proceed to determine custody between competing eligible
 1343 parties. The placement of the child should revert to the parent
 1344 or guardian who had physical custody of the child at the time of
 1345 the placement for adoption unless the court determines upon
 1346 clear and convincing evidence that this placement is not in the
 1347 best interests of the child or is not an available option for
 1348 the child. The court may not change the placement of a child who
 1349 has established a bonded relationship with the current caregiver
 1350 without providing for a reasonable transition plan consistent
 1351 with the best interests of the child. The court may direct the
 1352 parties to participate in a reunification or unification plan
 1353 with a qualified professional to assist the child in the
 1354 transition. The court may order scientific testing to determine
 1355 the paternity of the minor only if the court has determined that
 1356 the consent of the alleged father would be required, unless all
 1357 parties agree that such testing is in the best interests of the
 1358 child. The court may not order scientific testing to determine
 1359 paternity of an unmarried biological father if the child has a
 1360 father as described in s. 63.088(4)(a)-(d) whose rights have not
 1361 been previously terminated at any time during which the court
 1362 ~~has jurisdiction over the minor.~~ Further proceedings, if any,
 1363 regarding the minor must be brought in a separate custody action

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1364 under chapter 61, a dependency action under chapter 39, or a
 1365 paternity action under chapter 742.

1366 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1367 (a) A motion for relief from a judgment terminating
 1368 parental rights must be filed with the court originally entering
 1369 the judgment. The motion must be filed within a reasonable time,
 1370 but not later than 1 year after the entry of the judgment. An
 1371 unmarried biological father does not have standing to seek
 1372 relief from a judgment terminating parental rights if the mother
 1373 did not identify him to the adoption entity before the date she
 1374 signed a consent for adoption or if he was not located because
 1375 the mother failed or refused to provide sufficient information
 1376 to locate him.

1377 (b) No later than 30 days after the filing of a motion
 1378 under this subsection, the court must conduct a preliminary
 1379 hearing to determine what contact, if any, shall be permitted
 1380 between a parent and the child pending resolution of the motion.
 1381 Such contact shall be considered only if it is requested by a
 1382 parent who has appeared at the hearing and may not be awarded
 1383 unless the parent previously established a bonded relationship
 1384 with the child and the parent has pled a legitimate legal basis
 1385 and established a prima facie case for setting aside the
 1386 judgment terminating parental rights. If the court orders
 1387 contact between a parent and child, the order must be issued in
 1388 writing as expeditiously as possible and must state with
 1389 specificity any provisions regarding contact with persons other
 1390 than those with whom the child resides.

1391 (c) At the preliminary hearing, the court, upon the motion
 1392 of any party or upon its own motion, may order scientific

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1393 testing to determine the paternity of the minor if the person
 1394 seeking to set aside the judgment is alleging to be the child's
 1395 father and that fact has not previously been determined by
 1396 legitimacy or scientific testing. The court may order visitation
 1397 with a person for whom scientific testing for paternity has been
 1398 ordered and who has previously established a bonded relationship
 1399 with the child.

1400 (d) Unless otherwise agreed between the parties or for good
 1401 cause shown, the court shall conduct a final hearing on the
 1402 motion for relief from judgment within 45 days after the filing
 1403 and enter its written order as expeditiously as possible
 1404 thereafter.

1405 (e) If the court grants relief from the judgment
 1406 terminating parental rights and no new pleading is filed to
 1407 terminate parental rights, the placement of the child should
 1408 revert to the parent or guardian who had physical custody of the
 1409 child at the time of the original placement for adoption unless
 1410 the court determines upon clear and convincing evidence that
 1411 this placement is not in the best interests of the child or is
 1412 not an available option for the child. The court may not change
 1413 the placement of a child who has established a bonded
 1414 relationship with the current caregiver without providing for a
 1415 reasonable transition plan consistent with the best interests of
 1416 the child. The court may direct the parties to participate in a
 1417 reunification or unification plan with a qualified professional
 1418 to assist the child in the transition. The court may not direct
 1419 the placement of a child with a person other than the adoptive
 1420 parents without first obtaining a favorable home study of that
 1421 person and any other persons residing in the proposed home and

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1422 shall take whatever additional steps are necessary and
 1423 appropriate for the physical and emotional protection of the
 1424 child.

1425 Section 18. Subsection (3) of section 63.092, Florida
 1426 Statutes, is amended to read:

1427 63.092 Report to the court of intended placement by an
 1428 adoption entity; at-risk placement; preliminary study.—

1429 (3) PRELIMINARY HOME STUDY.—Before placing the minor in the
 1430 intended adoptive home, a preliminary home study must be
 1431 performed by a licensed child-placing agency, a child-caring
 1432 agency registered under s. 409.176, a licensed professional, or
 1433 agency described in s. 61.20(2), unless the adoptee is an adult
 1434 or the petitioner is a stepparent or a relative. If the adoptee
 1435 is an adult or the petitioner is a stepparent or a relative, a
 1436 preliminary home study may be required by the court for good
 1437 cause shown. The department is required to perform the
 1438 preliminary home study only if there is no licensed child-
 1439 placing agency, child-caring agency registered under s. 409.176,
 1440 licensed professional, or agency described in s. 61.20(2), in
 1441 the county where the prospective adoptive parents reside. The
 1442 preliminary home study must be made to determine the suitability
 1443 of the intended adoptive parents and may be completed prior to
 1444 identification of a prospective adoptive minor. A favorable
 1445 preliminary home study is valid for 1 year after the date of its
 1446 completion. Upon its completion, a signed copy of the home study
 1447 must be provided to the intended adoptive parents who were the
 1448 subject of the home study. A minor may not be placed in an
 1449 intended adoptive home before a favorable preliminary home study
 1450 is completed unless the adoptive home is also a licensed foster

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1451 home under s. 409.175. The preliminary home study must include,
1452 at a minimum:

- 1453 (a) An interview with the intended adoptive parents;
1454 (b) Records checks of the department's central abuse
1455 registry and criminal records correspondence checks under s.
1456 39.0138 through the Department of Law Enforcement on the
1457 intended adoptive parents;
1458 (c) An assessment of the physical environment of the home;
1459 (d) A determination of the financial security of the
1460 intended adoptive parents;
1461 (e) Documentation of counseling and education of the
1462 intended adoptive parents on adoptive parenting;
1463 (f) Documentation that information on adoption and the
1464 adoption process has been provided to the intended adoptive
1465 parents;
1466 (g) Documentation that information on support services
1467 available in the community has been provided to the intended
1468 adoptive parents; and
1469 (h) A copy of each signed acknowledgment of receipt of
1470 disclosure required by s. 63.085.

1471
1472 If the preliminary home study is favorable, a minor may be
1473 placed in the home pending entry of the judgment of adoption. A
1474 minor may not be placed in the home if the preliminary home
1475 study is unfavorable. If the preliminary home study is
1476 unfavorable, the adoption entity may, within 20 days after
1477 receipt of a copy of the written recommendation, petition the
1478 court to determine the suitability of the intended adoptive
1479 home. A determination as to suitability under this subsection

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1480 does not act as a presumption of suitability at the final
1481 hearing. In determining the suitability of the intended adoptive
1482 home, the court must consider the totality of the circumstances
1483 in the home. A ~~No~~ minor may not be placed in a home in which
1484 there resides any person determined by the court to be a sexual
1485 predator as defined in s. 775.21 or to have been convicted of an
1486 offense listed in s. 63.089(4)(b)2.

1487 Section 19. Subsection (7) is added to section 63.097,
1488 Florida Statutes, to read:

1489 63.097 Fees.—

1490 (7) In determining reasonable attorney fees, courts shall
1491 use the following criteria:

1492 (a) The time and labor required, the novelty and difficulty
1493 of the question involved, and the skill requisite to perform the
1494 legal service properly.

1495 (b) The likelihood, if apparent to the client, that the
1496 acceptance of the particular employment will preclude other
1497 employment by the attorney.

1498 (c) The fee customarily charged in the locality for similar
1499 legal services.

1500 (d) The amount involved in the subject matter of the
1501 representation, the responsibility involved in the
1502 representation, and the results obtained.

1503 (e) The time limitations imposed by the client or by the
1504 circumstances and, as between attorney and client, any
1505 additional or special time demands or requests of the attorney
1506 by the client.

1507 (f) The nature and length of the professional relationship
1508 with the client.

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1509 (g) The experience, reputation, diligence, and ability of
 1510 the attorney or attorneys performing the service and the skill,
 1511 expertise, or efficiency of effort reflected in the actual
 1512 providing of such services.

1513 (h) Whether the fee is fixed or contingent.

1514 Section 20. Section 63.152, Florida Statutes, is amended to
 1515 read:

1516 63.152 Application for new birth record.—Within 30 days
 1517 after entry of a judgment of adoption, the clerk of the court or
 1518 the adoption entity shall transmit a certified statement of the
 1519 entry to the state registrar of vital statistics on a form
 1520 provided by the registrar. A new birth record containing the
 1521 necessary information supplied by the certificate shall be
 1522 issued by the registrar on application of the adopting parents
 1523 or the adopted person.

1524 Section 21. Subsection (7) of section 63.162, Florida
 1525 Statutes, is amended to read:

1526 63.162 Hearings and records in adoption proceedings;
 1527 confidential nature.—

1528 (7) The court may, upon petition of an adult adoptee or
 1529 birth parent, for good cause shown, appoint an intermediary or a
 1530 licensed child-placing agency to contact a birth parent or adult
 1531 adoptee, as applicable, who has not registered with the adoption
 1532 registry pursuant to s. 63.165 and advise ~~both them~~ of the
 1533 availability of the intermediary or agency and that the birth
 1534 parent or adult adoptee, as applicable, wishes to establish
 1535 contact same.

1536 Section 22. Paragraph (c) of subsection (2) of section
 1537 63.167, Florida Statutes, is amended to read:

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1538 63.167 State adoption information center.—

1539 (2) The functions of the state adoption information center
 1540 shall include:

1541 (c) Operating a toll-free telephone number to provide
 1542 information and referral services. The state adoption
 1543 information center shall provide contact information for all
 1544 adoption entities in the caller's county or, if no adoption
 1545 entities are located in the caller's county, the number of the
 1546 nearest adoption entity when contacted for a referral to make an
 1547 adoption plan and shall rotate the order in which the names of
 1548 adoption entities are provided to callers.

1549 Section 23. Paragraph (g) of subsection (1) and subsections
 1550 (2) and (8) of section 63.212, Florida Statutes, are amended to
 1551 read:

1552 63.212 Prohibited acts; penalties for violation.—

1553 (1) It is unlawful for any person:

1554 (g) Except an adoption entity, to advertise or offer to the
 1555 public, in any way, by any medium whatever that a minor is
 1556 available for adoption or that a minor is sought for adoption;
 1557 and, further, it is unlawful for any person to publish or
 1558 broadcast any such advertisement or assist an unlicensed person
 1559 or entity in publishing or broadcasting any such advertisement
 1560 without including a Florida license number of the agency or
 1561 attorney placing the advertisement.

1562 1. Only a person who is an attorney licensed to practice
 1563 law in this state or an adoption entity licensed under the laws
 1564 of this state may place a paid advertisement or paid listing of
 1565 the person's telephone number, on the person's own behalf, in a
 1566 telephone directory that:

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1567 a. A child is offered or wanted for adoption; or
 1568 b. The person is able to place, locate, or receive a child
 1569 for adoption.
 1570 2. A person who publishes a telephone directory that is
 1571 distributed in this state:
 1572 a. Shall include, at the beginning of any classified
 1573 heading for adoption and adoption services, a statement that
 1574 informs directory users that only attorneys licensed to practice
 1575 law in this state and licensed adoption entities may legally
 1576 provide adoption services under state law.
 1577 b. May publish an advertisement described in subparagraph
 1578 1. in the telephone directory only if the advertisement contains
 1579 the following:
 1580 (I) For an attorney licensed to practice law in this state,
 1581 the person's Florida Bar number.
 1582 (II) For a child placing agency licensed under the laws of
 1583 this state, the number on the person's adoption entity license.
 1584 (2) Any person who is a birth mother, or a woman who holds
 1585 herself out to be a birth mother, who is interested in making an
 1586 adoption plan and who knowingly or intentionally benefits from
 1587 the payment of adoption-related expenses in connection with that
 1588 adoption plan commits adoption deception if:
 1589 (a) The person knows or should have known that the person
 1590 is not pregnant at the time the sums were requested or received;
 1591 (b) The person accepts living expenses assistance from a
 1592 prospective adoptive parent or adoption entity without
 1593 disclosing that she is receiving living expenses assistance from
 1594 another prospective adoptive parent or adoption entity at the
 1595 same time in an effort to adopt the same child; or

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1596 (c) The person knowingly makes false representations to
 1597 induce the payment of living expenses and does not intend to
 1598 make an adoptive placement. It is unlawful for:
 1599 ~~(a) Any person or adoption entity under this chapter to:~~
 1600 ~~1. Knowingly provide false information; or~~
 1601 ~~2. Knowingly withhold material information.~~
 1602 ~~(b) A parent, with the intent to defraud, to accept~~
 1603 ~~benefits related to the same pregnancy from more than one~~
 1604 ~~adoption entity without disclosing that fact to each entity.~~
 1605
 1606 Any person who willfully commits adoption deception ~~violates any~~
 1607 ~~provision of this subsection~~ commits a misdemeanor of the second
 1608 degree, punishable as provided in s. 775.082 or s. 775.083, if
 1609 the sums received by the birth mother or woman holding herself
 1610 out to be a birth mother do not exceed \$300, and a felony of the
 1611 third degree, punishable as provided in s. 775.082, s. 775.083,
 1612 or s. 775.084, if the sums received by the birth mother or woman
 1613 holding herself out to be a birth mother exceed \$300. In
 1614 addition, the person is liable for damages caused by such acts
 1615 or omissions, including reasonable attorney ~~attorney's~~ fees and
 1616 costs incurred by the adoption entity or the prospective
 1617 adoptive parent. Damages may be awarded through restitution in
 1618 any related criminal prosecution or by filing a separate civil
 1619 action.
 1620 (8) Unless otherwise indicated, a person who willfully and
 1621 with criminal intent violates any provision of this section,
 1622 excluding paragraph (1)(g), commits a felony of the third
 1623 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1624 775.084. A person who willfully and with criminal intent

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 1625 violates paragraph (1)(g) commits a misdemeanor of the second
 1626 degree, punishable as provided in s. 775.083; and each day of
 1627 continuing violation shall be considered a separate offense. In
 1628 addition, any person who knowingly publishes or assists with the
 1629 publication of any advertisement or other publication which
 1630 violates the requirements of paragraph (1)(g) commits a
 1631 misdemeanor of the second degree, punishable as provided in s.
 1632 775.083, and may be required to pay a fine of up to \$150 per day
 1633 for each day of continuing violation.

1634 Section 24. Paragraph (b) of subsection (1), paragraphs (a)
 1635 and (e) of subsection (2), and paragraphs (b), (h), and (i) of
 1636 subsection (6) of section 63.213, Florida Statutes, are amended
 1637 to read:

1638 63.213 Preplanned adoption agreement.—

1639 (1) Individuals may enter into a preplanned adoption
 1640 arrangement as specified in this section, but such arrangement
 1641 may not in any way:

1642 (b) Constitute consent of a mother to place her biological
 1643 child for adoption until 48 hours after the following birth of
 1644 the child and unless the court making the custody determination
 1645 or approving the adoption determines that the mother was aware
 1646 of her right to rescind within the 48-hour period after the
 1647 following birth of the child but chose not to rescind such
 1648 consent. The volunteer mother's right to rescind her consent in
 1649 a preplanned adoption applies only when the child is genetically
 1650 related to her.

1651 (2) A preplanned adoption agreement must include, but need
 1652 not be limited to, the following terms:

1653 (a) That the volunteer mother agrees to become pregnant by

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 1654 the fertility technique specified in the agreement, to bear the
 1655 child, and to terminate any parental rights and responsibilities
 1656 to the child she might have through a written consent executed
 1657 at the same time as the preplanned adoption agreement, subject
 1658 to a right of rescission by the volunteer mother any time within
 1659 48 hours after the birth of the child, if the volunteer mother
 1660 is genetically related to the child.

1661 (e) That the intended father and intended mother
 1662 acknowledge that they may not receive custody or the parental
 1663 rights under the agreement if the volunteer mother terminates
 1664 the agreement or if the volunteer mother rescinds her consent to
 1665 place her child for adoption within 48 hours after the birth of
 1666 the child, if the volunteer mother is genetically related to the
 1667 child.

1668 (6) As used in this section, the term:

1669 (b) "Child" means the child or children conceived by means
 1670 of a fertility technique ~~an insemination~~ that is part of a
 1671 preplanned adoption arrangement.

1672 (h) "Preplanned adoption arrangement" means the arrangement
 1673 through which the parties enter into an agreement for the
 1674 volunteer mother to bear the child, for payment by the intended
 1675 father and intended mother of the expenses allowed by this
 1676 section, for the intended father and intended mother to assert
 1677 full parental rights and responsibilities to the child if
 1678 consent to adoption is not rescinded after birth by a the
 1679 volunteer mother who is genetically related to the child, and
 1680 for the volunteer mother to terminate, subject to any a right of
 1681 rescission, all her parental rights and responsibilities to the
 1682 child in favor of the intended father and intended mother.

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1683 (i) "Volunteer mother" means a female at least 18 years of
1684 age who voluntarily agrees, subject to a right of rescission if
1685 it is her biological child, that if she should become pregnant
1686 pursuant to a preplanned adoption arrangement, she will
1687 terminate her parental rights and responsibilities to the child
1688 in favor of the intended father and intended mother.

1689 Section 25. Section 63.222, Florida Statutes, is amended to
1690 read:

1691 63.222 Effect on prior adoption proceedings.—Any adoption
1692 made before July 1, 2012, is the effective date of this act
1693 ~~shall be valid~~, and any proceedings pending on that the
1694 effective date and any subsequent amendments thereto of this act
1695 are not affected thereby unless the amendment is designated as a
1696 remedial provision.

1697 Section 26. Section 63.2325, Florida Statutes, is amended
1698 to read:

1699 63.2325 Conditions for invalidation ~~revocation~~ of a consent
1700 to adoption or affidavit of nonpaternity.—Notwithstanding the
1701 requirements of this chapter, a failure to meet any of those
1702 requirements does not constitute grounds for invalidation
1703 ~~revocation~~ of a consent to adoption or revocation ~~withdrawal~~ of
1704 an affidavit of nonpaternity unless the extent and circumstances
1705 of such a failure result in a material failure of fundamental
1706 fairness in the administration of due process, or the failure
1707 constitutes or contributes to fraud or duress in obtaining a
1708 consent to adoption or affidavit of nonpaternity.

1709 Section 27. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Adoption 1874

Topic Child Visitation and Adoption

Bill Number SB 1874
(if applicable)

Name Karen Oehme

Amendment Barcode _____
(if applicable)

Job Title Director Institute for Family Violence Studies

Address Florida State Univ. C. 2306

Phone 644-6303

Street

University Center, Tallahassee FL

E-mail KOehme@fsu.edu

City

State

Zip

Speaking: For Against Information

32306 - 2570

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Adoption

Bill Number 1874
(if applicable)

Name Summer Pfeiffer

Amendment Barcode Strickland
(if applicable)

Job Title Vice President Govt Relations

Address 1801 Miccosukee Common Dr.

Phone 850-339-5443

Street
Tallahassee, FL 32308
City State Zip

E-mail Summer.pfeiff@chsfl.org

Speaking: For Against Information

Representing Children's Home Society 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 1874
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Adoption Bill Bill Number SB 1874
(if applicable)

Name Patricia Strowbridge Amendment Barcode _____
(if applicable)

Job Title Florida Adoption Council, adoption attorney

Address 1514 E. Colonial Dr. Phone _____
Street

Orlando, FL 32803
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Adoption Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 Judiciary Committee

BILL: CS/SB 808

INTRODUCER: Committee on Education Pre-K - 12 and Senators Norman and Negron

SUBJECT: Joint Use of Public School Facilities

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	deMarsh-Mathues	ED	Fav/CS
2.	O'Connor	Cibula	JU	Favorable
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill grants immunity from personal injury liability to district school boards that implement certain public use of public school property unless gross negligence or intentional misconduct is established.

This bill facilitates, and encourages district school boards to adopt written policies on joint use agreements with local governments and private organizations regarding public use of recreational space at school grounds and facilities. District school boards are also encouraged to develop an appeals procedure for failed negotiations.

The Department of Education (DOE) is required to:

- Develop a model joint-use agreement for publication on its website;
- Post actual joint-use agreements submitted by district school boards on its website; and
- Develop criteria for a grant application process.

This bill creates sections 1013.105 and 768.072, Florida Statutes.

II. Present Situation:

Public Use of School Grounds

District school boards are authorized to allow public access for use of educational facilities and grounds for public assemblies, community use centers, or voting locations.¹

Standards of Negligence

Simple negligence is defined as doing something that a reasonable person would not do or failing to do something that a reasonable person would do under the same or similar circumstances.² The standard for gross negligence, as applied in tort cases where punitive damages are sought under Florida law, is as follows:

the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."³

By way of contrast, the higher standard of proof of intentional misconduct requires proof that the defendant possessed:

actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.⁴

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law doctrine that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and gives the Legislature the right to waive immunity. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Accordingly, officers, employees, and agents of the state are generally immune from tort liability for damages unless certain high-level intent can be shown. However, these provisions are considered to represent a limited waiver as they allow for some recovery, currently capped at \$200,000 per person

¹ Section 1013.10, F.S.

² See Florida Standard Civil Jury Instructions, No. 401.4, available at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#400 (last visited Feb. 15, 2012).

³ Section 768.72(2)(b), F.S.

⁴ Section 768.72(2)(a), F.S.

and \$300,000 per incident.⁵ Limits may be exceeded through the claims process, initiated through the filing of a legislative claim bill. Still, the review and award of a claim is entirely at the prerogative of the Legislature.

State agencies and subdivisions, for purposes of sovereign immunity, are defined to include:

The executive departments, the Legislature, the judicial branch, and the independent establishments of the state, including...counties and municipalities....⁶

Section 768.28(19), F.S., clarifies that the state, its agencies, and subdivisions do not waive sovereign immunity upon entering into a contractual relationship with another agency or subdivision of the state.

III. Effect of Proposed Changes:

Absent gross negligence or intentional misconduct, this bill extends immunity from civil liability for personal injury, property damage, or death to public school district boards that authorize public access for recreational purposes. Gross negligence is defined in this bill as an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting life or property.

The standard of gross negligence involves an act or omission the severity of which is in between ordinary or simple negligence and culpable or intentional misconduct. Gross negligence exists “if the likelihood of injury to others is known by the actor to be imminent or clear and present.”⁷ The definition provided in the bill for gross negligence appears to be consistent with the prevailing standard.

The immunity from liability provided to school district boards that enter into joint-use agreements is placed in the section of law that addresses torts, negligence, and sovereign immunity. Existing s. 768.28, F.S., provides a limited waiver of the sovereign immunity of the state, including school districts, for liability for damages for negligence. The effect of this bill when read together with existing s. 768.28, F.S., appears to restrict the state’s waiver of sovereign immunity for damages arising from the use of public school recreational facilities by the general public and others having a joint-use agreement to circumstances involving gross negligence or intentional misconduct, rather than simple negligence.

This bill encourages the development of an appeals process as a mechanism for mediation over failed joint-use negotiations. It is possible that a claimant could argue that a blanket refusal by a district school board to even negotiate entry into a particular agreement represents grounds for appeal.

⁵ Section 768.28(5), F.S. These amounts represent a recent increase from \$100,000 a person and \$200,000 per incident, which took effect October 1, 2011, subsequent to a change in the law during the 2010 Legislative Session (ch. 2010-26, L.O.F.)

⁶ Section 768.28(2), F.S.

⁷ *Personal Injury Law and Practice with Wrongful Death Actions*, West’s Florida Practice Series, 6 FLPRAC s. 2:12 (2011-2012 ed.) (citing *Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970)).

A grant application process for implementing joint use agreements is provided in the bill. However, the bill does not specify a funding source for these grants.

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 Department of Education would be required to develop a model joint use agreement and grant criteria, for publication on its website, and also provide a link to district school boards' actual joint use agreements.

Superintendents would be required to preside over appeals between district school boards and parties seeking to establish joint-use agreements.

This bill appears to provide for open access to the public, subject to certain time and condition restrictions. Should supervision be envisioned, it is anticipated that there will be some cost involved in maintaining a school oversight presence after-hours. It is unknown whether such a presence would be provided by the school or by the entity availing itself of the grounds.

Schools may also incur costs for maintenance due to increased use of shared facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by the Committee on Education Pre-K – 12 on February 6, 2012:**

The committee substitute:

- Encourages district school boards to adopt written policies that outline the outdoor recreation and sports facilities that are open to the public and the hours the facilities are open;
- Encourages district school boards to adopt an appeal process for failed negotiations over joint-use agreements;
- Provides a deadline by requiring district school boards to submit a copy of a policy or a joint-use agreement to the DOE within 30 days after its adoption;
- Clarifies that the purpose of grants is for shared facility implementation and requires the DOE to develop and post grant criteria;
- Removes trespass language; and
- Places immunity from liability language in the section of law on torts and negligence; and
- Redefines the term “gross negligence” as a higher standard.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Norman and Negron

581-02975-12

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A bill to be entitled

An act relating to the joint use of public school facilities; creating s. 1013.105, F.S.; providing legislative findings; encouraging each district school board to adopt written policies to promote public access to outdoor recreation and sports facilities on school property, increase the number of joint-use agreements, and develop and adopt policies and procedures for an appeal process when negotiations for a joint-use agreement fail; providing duties of district school boards and the Department of Education; creating s. 768.072, F.S.; providing immunity from liability for a district school board that adopts public access policies or enters into a joint-use agreement except in instances of gross negligence or intentional misconduct; defining the term "gross negligence"; providing an effective date.

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

Section 1. Section 1013.105, Florida Statutes is created to read:

1013.105 Joint use of public school facilities.-

(1) The Legislature finds that greater access to recreation and sports facilities is needed to reduce the impact of obesity on personal health and health care expenditures. The Legislature further finds that public schools are equipped with taxpayer-funded playgrounds, fields, tracks, courts, and other outdoor recreation and sports facilities that offer easily accessible

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opportunities for physical activity for residents of the community.

(2) Each district school board is encouraged to:

(a) Adopt written policies to promote public access to the outdoor recreation and sports facilities on public school property during nonschool hours when a school-sponsored or school-related activity is not occurring. A public access policy should outline the outdoor recreation and sports facilities that are open to the public and the hours the facilities are open.

(b) Increase the number of joint-use agreements entered into with a local government or a private organization. A joint-use agreement should set forth the terms and conditions for the shared use of outdoor recreation and sports facilities on public school property.

(c) Develop and adopt policies and procedures providing for an appeal process in which a party seeking to enter into a joint-use agreement with a school district pursuant to this section may file an appeal with the district school superintendent when the negotiations for such joint-use agreement fail.

Within 30 days after adopting a public access policy or entering into a joint-use agreement, a district school board must submit a copy of the policy or agreement to the Department of Education.

(3) The Department of Education shall:

(a) Develop a model joint-use agreement and post the model agreement on its website.

(b) Post on its website links to or copies of all district

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59 school board public access policies and joint-use agreements
60 submitted to the department by a district school board.

61 (c) Develop criteria for the acceptance of grants for
62 implementing joint-use agreements and post the criteria on its
63 website.

64 Section 2. Section 768.072, Florida Statutes, is created to
65 read:

66 768.072 Limitation on public school premises liability.-

67 (1) A district school board is not liable for civil damages
68 for personal injury, property damage, or death that occurs on a
69 public school property that the district school board has opened
70 up to the public, through public access policies or joint-use
71 agreements under s. 1013.105, unless gross negligence or
72 intentional misconduct on the part of the district school board
73 is a proximate cause of the injury, damage, or death.

74 (2) As used in this section, the term "gross negligence"
75 means the intentional failure to perform a manifest duty in
76 reckless disregard of the consequences as affecting the life or
77 property of another.

78 Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

20 Feb 12

Meeting Date

Topic Joint Use of School Property

Bill Number 808 (if applicable)

Name James Mosteller

Amendment Barcode (if applicable)

Job Title Government Relations Director

Address 2851 Hemington Green Circle, Ste 100 Tallahassee, FL 32308

Phone 850/727-3712

E-mail James.Mosteller@heart.org

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

Representing American Heart Association

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 808
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic Joint Use Bill Number 808
(if applicable)
Name FELY CURVA Amendment Barcode _____
(if applicable)
Job Title Partner, Curva & Associates LLC
Address 1212 Piedmont Dr. Phone (860) 508-2256
Street
Tallahassee FL 32312 E-mail curva@mindsping.com
City State Zip
Speaking: For Against Information

Representing Fh. Alliance for Health, PE, Recreation,
Dance & Sport

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

20 FEB 2012

Meeting Date

Topic SCHOOL LIABILITY

Bill Number 808
(if applicable)

Name PAUL JESS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 218 S Monroe St

Phone 224-9403

Street
Tallahassee 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA JUSTICE 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 (10/20/11)

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 Judiciary Committee

BILL: CS/SJR 1056

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Norman

SUBJECT: Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Fav/CS
2.	Toman	Yeatman	CA	Favorable
3.	White	Cibula	JU	Favorable
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The joint resolution proposes an amendment to Article VII, section 6 of the Florida Constitution, which would allow the Legislature to provide ad valorem tax relief to surviving spouses of veterans and first responders who died from causes connected to their service, either while on active duty as a member of the United States Armed Forces, or while performing the duties of a first responder. The amount of tax relief contemplated by this joint resolution, to be defined by general law, may equal up to the total amount of the ad valorem tax owed on the homestead property. The joint resolution also proposes an amendment to create section 32 of Article XII of the Florida Constitution, providing an effective date of January 1, 2013.

For the proposed amendment to be placed on the ballot at the 2012 General Election, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

The joint resolution proposes an amendment to section 6, Article VII of the Florida Constitution.

The joint resolution proposes the creation of section 32, Article XII of the Florida Constitution.

II. Present Situation:

Property Valuation in Florida

Median home values in Florida climbed from \$23,100 in 1940 to \$105,500 in 2000,¹ but more recently sales prices have been stagnant across the state, with median sales prices for existing homes dropping 3 percent in 2011.² Some economists, however, predict renewed increases in home prices “in the Miami and Naples markets” throughout 2012 and the beginning of 2013, with a “recovery [that] is likely to roll northward to Central Florida and then North Florida.”³

Although Florida homeowners may face the “frustrating paradox[]” of falling real estate markets combined with rising property taxes,⁴ Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”⁵ The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.⁶

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.⁷ Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁸ Land used for conservation purposes must be assessed solely

¹ U.S. Census Bureau, *Housing and Household Economic Statistics Division, Historical Census of Housing Tables: Home Values* (Last Revised Oct. 31, 2011), available at <http://www.census.gov/hhes/www/housing/census/historic/values.html> (last visited Feb. 2, 2012).

² In 2011, the median sales price for existing homes was \$131,700, down from \$135,900 in 2010. Florida Realtors, *Florida’s housing sales activity higher as 2011 ends* (Jan. 20, 2012), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=270287> (last visited Feb. 2, 2012).

³ Florida Realtors, *Leading U. S. economists: Fla.’s housing market bouncing back* (Dec. 7, 2011), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=268417> (last visited Feb. 2, 2012) (quoting Dr. Lawrence Yun, chief economist for the National Association of Realtors®).

⁴ See Tim Padgett, *TIME, Florida’s Property Taxes Go Wacky in Housing Slump* (June 29, 2009), available at <http://www.time.com/time/business/article/0,8599,1907198,00.html> (last visited Feb. 2, 2012) (quoting Kurt Wenner, research director at Florida Tax Watch in Tallahassee).

⁵ FLA. CONST. art. VII, s. 2.

⁶ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁷ The constitutional provisions in section 4, Art. VII, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

⁸ FLA. CONST. art. VII, s. 4(a).

on the basis of character or use.⁹ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.¹⁰ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.¹¹ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.¹² Certain working waterfront property is assessed based upon the property's current use.¹³

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹⁴

Assessment Limitations

Save Our Homes

The *Save Our Homes* assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).¹⁵ In addition, an assessment may not exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution, to provide for the portability of the accrued benefit under the *Save Our Homes* assessment limitation. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the accrued benefit to the new homestead.

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹⁶

⁹ Art. VII, section 4(b) of the Florida Constitution.

¹⁰ FLA. CONST. art. VII, s. 4(e).

¹¹ FLA. CONST. art. VII, s. 4(f).

¹² FLA. CONST. art. VII, s. 4(i).

¹³ FLA. CONST. art. VII, s. 4(j).

¹⁴ FLA. CONST. art. VII, ss. 3 and 6.

¹⁵ FLA. CONST. art. VII, s. 4(d).

¹⁶ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemption for Qualified Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000. This additional exemption applies to any person who has legal and equitable title to real estate who maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed \$20,000. In the implementing legislation for the exemption, the Legislature indexed the \$20,000 figure to inflation. Adjusted for inflation, the current senior low income exemption is around \$26,000.¹⁷

Section 196.075, F.S., is the general law enacted to allow counties and municipalities to grant the additional homestead exemption for qualified senior citizens. The county or municipality must grant this additional exemption by ordinance, which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.¹⁸ For purposes of the exemption, “household income” means “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”¹⁹ The term “household” means “a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.”²⁰ In 2010, 59 boards of county commissioners and 206 city commissions had enacted local ordinances granting the additional exemption for seniors.²¹

Exemption for Surviving Spouses of Certain Veterans

Section 196.081(4), F.S., currently provides, under specified conditions, a full exemption from ad valorem taxes on property that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces. To be eligible for the exemption the surviving spouse must provide a letter from the United States Government or United States Department of Veterans Affairs or its predecessor certifying that the veteran died from service-connected causes while on active duty.

¹⁷ Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).

¹⁸ See s. 196.075, F.S. (Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities.).

¹⁹ Section 196.075(1)(b), F.S.

²⁰ Section 196.075(1)(a), F.S.

²¹ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited Feb. 3, 2012) (Data obtained from tax rolls submitted to the Department of Revenue for 2010).

Additionally, the veteran must have been a permanent resident of this state on January 1, of the year in which he or she died.

Ad Valorem Discount for Veterans

Article VII, section 6(e) of the Florida Constitution, provides that each veteran, who is age 65 or older and is partially or totally permanently disabled, is entitled to a discount from the amount of the ad valorem tax otherwise owed on homestead property. The disability must be combat related, the veteran must have been a resident of Florida at the time of entering the military service, and the veteran must have been honorably discharged. The discount is in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

Ad Valorem Exemption for Deployed Military Personnel

Article VII, section 3 of the Florida Constitution, provides for other specific exemptions from property taxes. One such exemption applies to military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.²² The applicable exemption is for a percentage of the taxable value of the homestead property that is equal to the percent of the time during the preceding calendar year the person was deployed on active duty outside of the continental United States, Alaska, or Hawaii, in support of military operations designated by the legislature.

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to the Florida Constitution which would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, may partially, or totally, exempt the ad valorem tax owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. The proposed amendment defines "in the line of duty" to mean "arising out of and in the actual performance of duty required by employment as a first responder." The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters at the 2012 General Election.

²² FLA. CONST. art. VII, s. 3(g).

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

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”²³

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be \$108,793.50.²⁴ The division estimates the cost based on the average cost per word to advertise the proposed constitutional amendment.

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on the date specified in the amendment, which is January 1, 2013.

²³ *Roberts v. Doyle*, 43 So. 3d 654, 659, citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

²⁴ E-mail correspondence with Department of State staff (Jan. 27, 2012) (on file with Senate Judiciary Committee).

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

The proposed amendment, if approved by the voters and implemented by the Legislature, would provide homestead exemptions for surviving spouses of certain veterans and first responders.

B. Private Sector Impact:

If the proposed amendment is approved by the electorate and implemented by the Legislature, surviving spouses of certain veterans and first responders could receive property tax relief.

C. Government Sector Impact:

The Revenue Estimating Conference has estimated an indeterminate annual reduction in tax revenues, if voters approve this constitutional amendment and if it is implemented by the Legislature.

Article XI, section 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be \$108,793.50.²⁵ The division estimates the cost based on the average cost per word to advertise a proposed constitutional amendment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Military Affairs, Space, and Domestic Security on January 26, 2012:**

The bill clarifies that the constitutional amendment proposed by the joint resolution takes effect January 1, 2013, if approved by voters.

²⁵ *Id.*

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 the Committee on Military Affairs, Space, and Domestic Security; and Senator Norman

583-02475-12

20121056c1

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district

Page 1 of 5

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

583-02475-12

20121056c1

levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an

Page 2 of 5

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

583-02475-12

20121056c1

59 additional homestead tax exemption not exceeding fifty thousand
60 dollars to any person who has the legal or equitable title to
61 real estate and maintains thereon the permanent residence of the
62 owner and who has attained age sixty-five and whose household
63 income, as defined by general law, does not exceed twenty
64 thousand dollars. The general law must allow counties and
65 municipalities to grant this additional exemption, within the
66 limits prescribed in this subsection, by ordinance adopted in
67 the manner prescribed by general law, and must provide for the
68 periodic adjustment of the income limitation prescribed in this
69 subsection for changes in the cost of living.

70 (e) Each veteran who is age 65 or older who is partially or
71 totally permanently disabled shall receive a discount from the
72 amount of the ad valorem tax otherwise owed on homestead
73 property the veteran owns and resides in if the disability was
74 combat related, the veteran was a resident of this state at the
75 time of entering the military service of the United States, and
76 the veteran was honorably discharged upon separation from
77 military service. The discount shall be in a percentage equal to
78 the percentage of the veteran's permanent, service-connected
79 disability as determined by the United States Department of
80 Veterans Affairs. To qualify for the discount granted by this
81 subsection, an applicant must submit to the county property
82 appraiser, by March 1, proof of residency at the time of
83 entering military service, an official letter from the United
84 States Department of Veterans Affairs stating the percentage of
85 the veteran's service-connected disability and such evidence
86 that reasonably identifies the disability as combat related, and
87 a copy of the veteran's honorable discharge. If the property

583-02475-12

20121056c1

88 appraiser denies the request for a discount, the appraiser must
89 notify the applicant in writing of the reasons for the denial,
90 and the veteran may reapply. The Legislature may, by general
91 law, waive the annual application requirement in subsequent
92 years. This subsection shall take effect December 7, 2006, is
93 self-executing, and does not require implementing legislation.

94 (f) (1) By general law and subject to conditions and
95 limitations specified therein, the Legislature may provide ad
96 valorem tax relief equal to the total amount or a portion of the
97 ad valorem tax otherwise owed on homestead property to the
98 surviving spouse of:

99 a. A veteran who died from service-connected causes while
100 on active duty as a member of the United States Armed Forces.

101 b. A first responder who died in the line of duty.

102 (2) As used in this subsection and as further defined by
103 general law, the term:

104 a. "First responder" means a law enforcement officer, a
105 correctional officer, a firefighter, an emergency medical
106 technician, or a paramedic.

107 b. "In the line of duty" means arising out of and in the
108 actual performance of duty required by employment as a first
109 responder.

ARTICLE XII

SCHEDULE

112 SECTION 32. Ad valorem tax relief for surviving spouses of
113 veterans who died from service-connected causes and first
114 responders who died in the line of duty.-This section and the
115 amendment to Section 6 of Article VII permitting the legislature
116 to provide ad valorem tax relief to surviving spouses of

583-02475-12

20121056c1

117 veterans who died from service-connected causes and first
118 responders who died in the line of duty shall take effect
119 January 1, 2013.

120 BE IT FURTHER RESOLVED that the following statement be
121 placed on the ballot:

122 CONSTITUTIONAL AMENDMENT

123 ARTICLE VII, SECTION 6

124 ARTICLE XII, SECTION 32

125 HOMESTEAD PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSE OF
126 MILITARY VETERAN OR FIRST RESPONDER.—Proposing an amendment to
127 the State Constitution to authorize the Legislature to provide
128 by general law ad valorem homestead property tax relief to the
129 surviving spouse of a military veteran who died from service-
130 connected causes while on active duty or to the surviving spouse
131 of a first responder who died in the line of duty. The amendment
132 authorizes the Legislature to totally exempt or partially exempt
133 such surviving spouse's homestead property from ad valorem
134 taxation. The amendment defines a first responder as a law
135 enforcement officer, a correctional officer, a firefighter, an
136 emergency medical technician, or a paramedic. This amendment
137 takes effect January 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 1056
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/26/2012

Meeting Date

Topic Homestead Property Tax Exemption Bill Number 1050
(if applicable)

Name Matt Rickett Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 300 East Brevard St. Phone 850-222-3329

Street

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Police Benevolent 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/20/12
Meeting Date

Topic Homestead Exempt First Resp.

Bill Number 1056
(if applicable)

Name John Gattlin

Amendment Barcode _____
(if applicable)

Job Title Deputy Fire Chief

Address 327 N Adams

Phone 850 891 6600

Tul FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Fire Chief

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1058

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Norman

SUBJECT: Homestead Property Tax Exemptions

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Fav/CS
2.	Toman	Yeatman	CA	Favorable
3.	White	Cibula	JU	Favorable
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill sets forth the requirements for a full exemption from ad valorem taxes as authorized by the proposed constitutional amendment in CS/SJR 1056. The exemption is available under specified conditions to the surviving spouse of a “first responder” who died in the line of duty if the real estate is owned and used by the surviving spouse as a homestead. The bill defines the terms “first responder” and “in the line of duty.”

The bill takes effect upon the approval of the voters of the amendment proposed by CS/SJR 1056. The bill first applies to property taxes in 2013.

This bill substantially amends section 196.081 of the Florida Statutes.

This bill creates three undesignated sections of law.

II. Present Situation:

Property Valuation in Florida

Median home values in Florida climbed from \$23,100 in 1940 to \$105,500 in 2000,¹ but more recently sales prices have been stagnant across the state, with median sales prices for existing homes dropping 3 percent in 2011.² Some economists, however, predict renewed increases in home prices “in the Miami and Naples markets” throughout 2012 and the beginning of 2013, with a “recovery [that] is likely to roll northward to Central Florida and then North Florida.”³

Although Florida homeowners may face the “frustrating paradox[]” of falling real estate markets combined with rising property taxes,⁴ Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”⁵ The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.⁶

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.⁷ Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁸ Land used for conservation purposes must be assessed solely

¹ U.S. Census Bureau, *Housing and Household Economic Statistics Division, Historical Census of Housing Tables: Home Values* (Last Revised Oct. 31, 2011), available at <http://www.census.gov/hhes/www/housing/census/historic/values.html> (last visited Feb. 2, 2012).

² In 2011, the median sales price for existing homes was \$131,700, down from \$135,900 in 2010. Florida Realtors, *Florida’s housing sales activity higher as 2011 ends* (Jan. 20, 2012), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=270287> (last visited Feb. 2, 2012).

³ Florida Realtors, *Leading U. S. economists: Fla.’s housing market bouncing back* (Dec. 7, 2011), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=268417> (last visited Feb. 2, 2012) (quoting Dr. Lawrence Yun, chief economist for the National Association of Realtors®).

⁴ See Tim Padgett, *TIME, Florida’s Property Taxes Go Wacky in Housing Slump* (June 29, 2009), available at <http://www.time.com/time/business/article/0,8599,1907198,00.html> (last visited Feb. 2, 2012) (quoting Kurt Wenner, research director at Florida Tax Watch in Tallahassee).

⁵ FLA. CONST. art. VII, s. 2.

⁶ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁷ The constitutional provisions in section 4, Art. VII, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

⁸ FLA. CONST. art. VII, s. 4(a).

on the basis of character or use.⁹ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.¹⁰ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.¹¹ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.¹² Certain working waterfront property is assessed based upon the property's current use.¹³

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹⁴

Assessment Limitations

Save Our Homes

The *Save Our Homes* assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).¹⁵ In addition, an assessment may not exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution, to provide for the portability of the accrued benefit under the *Save Our Homes* assessment limitation. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the accrued benefit to the new homestead.

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹⁶

⁹ FLA. CONST. art. VII, s. 4(b).

¹⁰ FLA. CONST. art. VII, s. 4(e).

¹¹ FLA. CONST. art. VII, s. 4(f).

¹² FLA. CONST. art. VII, s. 4(i).

¹³ FLA. CONST. art. VII, s. 4(j).

¹⁴ FLA. CONST. art. VII, ss. 3 and 6.

¹⁵ FLA. CONST. art. VII, s. 4(d).

¹⁶ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemption for Qualified Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000. This additional exemption applies to any person who has legal and equitable title to real estate who maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed \$20,000. In the implementing legislation for the exemption, the Legislature indexed the \$20,000 figure to inflation. Adjusted for inflation, the current senior low income exemption is around \$26,000.¹⁷

Section 196.075, F.S., is the general law enacted to allow counties and municipalities to grant the additional homestead exemption for qualified senior citizens. The county or municipality must grant this additional exemption by ordinance, which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.¹⁸ For purposes of the exemption, “household income” means “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”¹⁹ The term “household” means “a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.”²⁰ In 2010, 59 boards of county commissioners and 206 city commissions had enacted local ordinances granting the additional exemption for seniors.²¹

Exemption for Surviving Spouses of Certain Veterans

Section 196.081(4), F.S., currently provides, under specified conditions, a full exemption from ad valorem taxes on property that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces. To be eligible for the exemption the surviving spouse must provide a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran died from service-connected causes while

¹⁷ Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).

¹⁸ See s. 196.075, F.S. (Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities.).

¹⁹ Section 196.075(1)(b), F.S.

²⁰ Section 196.075(1)(a), F.S.

²¹ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited Feb. 3, 2012) (Data obtained from tax rolls submitted to the Department of Revenue for 2010).

on active duty. Additionally, the veteran must have been a permanent resident of this state on January 1, of the year in which he or she died.

Ad Valorem Discount for Veterans

Article VII, section 6(e) of the Florida Constitution, provides that each veteran, who is age 65 or older and is partially or totally permanently disabled, is entitled to a discount from the amount of the ad valorem tax otherwise owed on homestead property. The disability must be combat related, the veteran must have been a resident of Florida at the time of entering the military service, and the veteran must have been honorably discharged. The discount is in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

Ad Valorem Exemption for Deployed Military Personnel

Article VII, section 3 of the Florida Constitution, provides for other specific exemptions from property taxes. One such exemption applies to military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.²² The applicable exemption is for a percentage of the taxable value of the homestead property that is equal to the percent of the time during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii, in support of military operations designated by the legislature.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to provide that the act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2 amends s. 196.081, F.S., to set forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/SJR 1056. The exemption is available under specified conditions to the surviving spouse of a "first responder" who died "in the line of duty." The exemption applies to real estate that is owned and used by the surviving spouse as a homestead.²³

The bill defines the term "first responder" to mean a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "in the line of duty" to mean:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;

²² FLA. CONST. art. VII, s. 3(g).

²³ The bill specifies that these terms are defined for purposes of this exemption only and do not apply to the payment of benefits under ss. 112.19 or 112.191, F.S., relating to death benefits.

- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities enumerated above if the training has been authorized by the employing entity.

Under the bill, a death also occurs “in the line of duty” if the death:

- Occurs within 24 hours after one of the events or activities listed above;
- Results from a heart attack or stroke that causes the death or causes an injury resulting in death; and
- Is directly and proximately caused by the initial event or activity.

The bill specifies the documentation required to qualify for the exemption. The bill requires a surviving spouse of a first responder who seeks to qualify for the exemption to produce a letter issued by a governmental entity which legally recognizes and certifies that the first responder died in the line of duty while employed as a first responder. The bill provides that production by the surviving spouse of this letter is prima facie evidence that the surviving spouse is entitled to this exemption.

The bill provides that the exemption may apply as long as the spouse holds the legal or beneficial title to the homestead, permanently resides on the property, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Section 3 creates an undesignated section of law to provide that the bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter. The bill does not provide a basis for relief from an assessment of taxes not paid or create a right to refund of taxes paid before January 1, 2013.

The provisions of the bill apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

Section 4 creates an undesignated section of law to appropriate \$100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/SJR 1056 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution.

Section 5 provides that the bill takes effect upon the approval of the amendment proposed by CS/SJR 1056. As a result, the bill will take effect on January 1, 2013, if CS/SJR 1056 is approved by the electors in the 2012 General Election.

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 implements the proposed constitutional amendment contained in CS/SJR 1056, which provides ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty.

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

If the amendment proposed by CS/SJR 1056 is approved by the voters, the bill would exempt surviving spouses of certain first responders from paying ad valorem taxes on homestead property.

B. Private Sector Impact:

If the amendment proposed by CS/SJR 1056 is approved by the voters, the bill would provide property tax relief to surviving spouses of certain first responders.

C. Government Sector Impact:

The Revenue Estimating Conference has estimated an indeterminate annual reduction in tax revenues, if voters approve this constitutional amendment and if it is implemented by the Legislature.

The bill appropriates \$100,302 to the Department of State (department) to publish the proposed constitutional amendment contained in CS/SJR 1056 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution. According to the department, the estimated cost to publish the proposed constitutional amendment is \$108,793.50.²⁴ The department estimates the cost based on the average cost per word to advertise a constitutional amendment.

²⁴ E-mail correspondence with Department of State staff (Jan. 27, 2012) (on file with Senate Judiciary Committee).

VI. Technical Deficiencies:

The word “deaths” in line 134 of the CS should be changed to the singular form “death” for subject-verb agreement.

VII. Related Issues:

None.

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

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

CS by Military Affairs, Space, and Domestic Security on January 26, 2012:

- Removes changes dealing with the current exemption for surviving spouses of military veterans who died from service-connected causes while on active duty.
- Clarifies that the terms “first responder” and “in the line of duty” are defined for purposes of this exemption.
- Clarifies that the exemption begins with the 2013 tax roll.
- Provides an appropriation to publish the proposed constitutional amendment in newspapers in each county as required by the Florida Constitution.

B. Amendments:

None.

By the Committee on Military Affairs, Space, and Domestic Security; and Senator Norman

583-02476-12

20121058c1

A bill to be entitled

An act relating to homestead property tax exemptions; providing a short title; amending s. 196.081, F.S.; exempting from taxation the homestead property of the surviving spouse of a first responder who dies in the line of duty; providing definitions for "first responder" and "line of duty"; providing construction with respect the applicable tax roll and the date of death; providing an appropriation; providing effective dates, one of which is contingent.

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

Section 1. This act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2. Section 196.081, Florida Statutes, is amended to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans; exemption for surviving spouses of first responders who die in the line of duty.-

(1) Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being

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

583-02476-12

20121058c1

claimed or was a permanent resident of this state on January 1 of the year the veteran died.

(2) The production by a veteran or the spouse or surviving spouse of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs or its predecessor before the property appraiser of the county in which property of the veteran lies is prima facie evidence of the fact that the veteran or the surviving spouse is entitled to the exemption.

(3) If the totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides thereon as specified in s. 196.031, the exemption from taxation carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry.

(4) ~~(a)~~ Any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the

Page 2 of 6

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

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59 veteran died.

60 ~~(a)(b)~~ The production of the letter by the surviving spouse
61 ~~which~~ ~~of a letter that was issued as required under paragraph~~
62 ~~(a) and that~~ attests to the veteran's death while on active duty
63 is prima facie evidence ~~of the fact~~ that the surviving spouse is
64 entitled to the an exemption under paragraph (a).

65 ~~(b)(c)~~ The tax exemption ~~that applies under paragraph (a)~~
66 ~~to the surviving spouse~~ carries over to the benefit of the
67 veteran's surviving spouse as long as the spouse holds the legal
68 or beneficial title to the homestead, permanently resides
69 thereon as specified in s. 196.031, and does not remarry. If the
70 surviving spouse sells the property, an exemption not to exceed
71 the amount granted under from the most recent ad valorem tax
72 roll may be transferred to his or her new residence as long as
73 it is used as his or her primary residence and he or she does
74 not remarry.

75 (5) Any real estate that is owned and used as a homestead
76 by the surviving spouse of a first responder who died in the
77 line of duty while employed by the state or any political
78 subdivision of the state, including authorities and special
79 districts, and for whom a letter from the state or appropriate
80 political subdivision of the state, or other authority or
81 special district, has been issued which legally recognizes and
82 certifies that the first responder died in the line of duty
83 while employed as a first responder is exempt from taxation if
84 the first responder and his or her surviving spouse were
85 permanent residents of this state on January 1 of the year in
86 which the first responder died.

87 (a) The production of the letter by the surviving spouse

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88 which attests to the first responder's death in the line of duty
89 is prima facie evidence that the surviving spouse is entitled to
90 the exemption.

91 (b) The tax exemption carries over to the benefit of the
92 first responder's surviving spouse as long as the spouse holds
93 the legal or beneficial title to the homestead, permanently
94 resides thereon as specified in s. 196.031, and does not
95 remarry. If the surviving spouse sells the property, an
96 exemption not to exceed the amount granted under the most recent
97 ad valorem tax roll may be transferred to his or her new
98 residence if it is used as his or her primary residence and he
99 or she does not remarry.

100 (c) As used in this subsection only, and not applicable to
101 the payment of benefits under s. 112.19 or s. 112.191, the term:

102 1. "First responder" means a law enforcement officer or
103 correctional officer as defined in s. 943.10, a firefighter as
104 defined in s. 633.30, or an emergency medical technician or
105 paramedic as defined in s. 401.23 who is a full-time paid
106 employee, part-time paid employee, or unpaid volunteer.

107 2. "In the line of duty" means:

108 a. While engaging in law enforcement;

109 b. While performing an activity relating to fire
110 suppression and prevention;

111 c. While responding to a hazardous material emergency;

112 d. While performing rescue activity;

113 e. While providing emergency medical services;

114 f. While performing disaster relief activity;

115 g. While otherwise engaging in emergency response activity;

116 or

583-02476-12 20121058c1

117 h. While engaging in a training exercise related to any of
 118 the events or activities enumerated in this subparagraph if the
 119 training has been authorized by the employing entity.

120
 121 A heart attack or stroke that causes death or causes an injury
 122 resulting in death must occur within 24 hours after an event or
 123 activity enumerated in this subparagraph and must be directly
 124 and proximately caused by the event or activity in order to be
 125 considered as having occurred in the line of duty.

126 Section 3. Construction.-

127 (1) The revisions to s. 196.081, Florida Statutes, made by
 128 this act operate prospectively to the 2013 tax roll and do not
 129 provide a basis for relief from an assessment of taxes not paid
 130 or create a right to a refund of taxes paid before January 1,
 131 2013.

132 (2) The provisions of s. 196.081(5), Florida Statutes, as
 133 created by this act apply to the homestead exemption of the
 134 surviving spouse of a first responder whose deaths occurs
 135 before, on, or after the effective date of this act.

136 Section 4. Effective July 1, 2012, the sum of \$100,302 in
 137 nonrecurring funds is appropriated from the General Revenue Fund
 138 to the Department of State for purposes of publishing, as
 139 required under s. 5(d), Article XI of the State Constitution,
 140 the proposed constitutional amendment contained in Committee
 141 Substitute for Senate Joint Resolution 1056, or a similar joint
 142 resolution having substantially the same specific intent and
 143 purpose.

144 Section 5. Except as otherwise expressly provided in this
 145 act and except for this section, which shall take effect July 1,

583-02476-12 20121058c1

146 2012, this act shall take effect on the same date that CS for
 147 SJR 1056, or a similar joint resolution having substantially the
 148 same specific intent and purpose, takes effect if approved by
 149 the electors at the general election held in November 2012 or at
 150 an earlier special election specifically authorized by law for
 151 that purpose.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 1058
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic Homestead Property Tax Exemption

Bill Number 1058
(if applicable)

Name Matt Rickett

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 300 East Brevard St.

Phone 850-222-3329

Street

Tallahassee FL 32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing Florida Police Benevolent 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 (10/20/11)

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 Judiciary Committee

BILL: CS/SJR 1508

INTRODUCER: Judiciary Committee and Senators Montford and Ring

SUBJECT: Board of Governors/Student Body President

DATE: February 22, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	deMarsh-Mathues	HE	Favorable
2.	Irwin	Cibula	JU	Fav/CS
3.			EE	
4.			RC	
5.				
6.				

I. Summary:

The Senate Joint Resolution proposes an amendment to article IX, section 7 of the State Constitution to remove the Florida Student Association (FSA) as the organization responsible for electing the student member of the Board of Governors (BOG) of the State University System (SUS) and to require that the BOG organize a council of state university student body presidents for the purpose of electing one of the state university student body presidents to the BOG.

This joint resolution proposes an amendment to Article IX, section 7, State Constitution.

II. Present Situation:

The State Constitution establishes the Board of Governors (BOG) as a 17-member body corporate to manage the state university system.¹ The Governor must appoint 14 citizen members who are confirmed by the Florida Senate and serve staggered terms of 7 years.² In addition, the Commissioner of Education, the chair of the advisory council of faculty senates, and the president of the Florida Student Association (FSA) serve as *ex officio* members.^{3,4}

¹ FLA. CONST. art. IX, s. 7(d).

² *Id.*

³ *Id.*

⁴ *Ex officio* means “[b]y virtue or because of an office.” BLACK’S LAW DICTIONARY (9th ed. 2009).

According to the BOG, elections for the student government president at each state university are held during each spring semester.^{5, 6} Student government presidents serve a 1-year term.⁷ The FSA consists of student government presidents of state universities and whose membership in this organization is voluntary.⁸ In 2010, the student government president of the Florida State University withdrew from membership in the FSA.⁹ The other ten university student bodies are represented currently through their respective student government presidents.¹⁰

Although the FSA is not directly affiliated with the [BOG], the President of the FSA is a member of the [BOG] and advises the [BOG] on all system-wide student issues that come before the [BOG]. Additionally, the FSA membership works closely with the Chancellor on issues of importance to the students of the State University System (SUS).¹¹

III. Effect of Proposed Changes:

The Senate Joint Resolution proposes an amendment to article IX, section 7 of the State Constitution to remove the Florida Student Association (FSA) as the organization responsible for electing the student member of the Board of Governors (BOG) of the State University System (SUS). In place of the FSA, the joint resolution requires that the BOG organize a council of state university student body presidents for the purpose of electing one of the state university student body presidents to the BOG.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ “Each student government shall be organized and maintained by students and shall be composed of at least a student body president, a student legislature, and a student judiciary. The student body president and the student legislative body shall be elected by the student body. . . .” Section 1004.26(2), F.S.

⁶ Board of Governors, *2012 Legislative Bill Analysis SJR 1508* (February 6, 2012) (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

D. Other Constitutional Issues:

An amendment to the State Constitution may be proposed by the Legislature by a joint resolution agreed to by three-fifths of the membership of each house.¹² A proposed amendment placed on the ballot must be approved by at least 60 percent of the electors voting on the measure in order to become an amendment to the constitution.¹³

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Board of Governors (BOG), the joint resolution will not create a fiscal impact to the State University System (SUS).

Each proposed constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week, preceding the general election.¹⁴ Costs for advertising vary depending upon the length of the amendment. The Department of State estimates an average cost of \$106.14 per word for advertising an amendment.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on February 20, 2012:

The Committee Substitute (CS) deletes a provision authorizing the Governor to appoint an additional member to the Board of Governors (BOG), who must be a state university

¹² FLA. CONST. art. XI, s. 1.

¹³ FLA. CONST. art. XI, s. 5(e).

¹⁴ FLA. CONST. art. XI, s. 5(d).

¹⁵ E-mail from Pierce W. Schuessler, Legislative Affairs Director, Florida Department of State, to Dustin Irwin, Intern, Senate Committee on Judiciary (February 16, 2012) (on file with the Senate Committee on Judiciary).

student body president. Alternatively, the CS authorizes the BOG to create a council consisting of state university student body presidents, the chair of which becomes an *ex officio* member of the BOG.

B. Amendments:

None.

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



210862

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 85
and insert:
law. The governor shall appoint to the board fourteen citizens
dedicated to the purposes of the state university system. The
appointed members shall be confirmed by the senate and serve
staggered terms of seven years as provided by law. The
commissioner of education, the chair of the advisory council of
faculty senates, or the equivalent, and the chair of the council
of student body presidents, which council shall be organized by
the board of governors and consist of all the student body
presidents of the state university system ~~and the president of~~



210862

14 ~~the Florida student association, or the equivalent,~~ shall also
15 be members of the board.

16 BE IT FURTHER RESOLVED that the following statement be
17 placed on the ballot:

18 CONSTITUTIONAL AMENDMENT

19 ARTICLE IX, SECTION 7

20 APPOINTMENT OF STUDENT BODY PRESIDENT TO BOARD OF GOVERNORS
21 OF THE STATE UNIVERSITY SYSTEM.—Proposing an amendment to the
22 State Constitution to remove the Florida Student Association as
23 the organization responsible for electing the student member of
24 the Board of Governors of the State University System and to
25 require that the Board of Governors organize a council of state
26 university student body presidents for the purpose of electing
27 one of the state university student body presidents to the Board
28 of Governors.

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete lines 3 - 7

33 and insert:

34 of Article IX of the State Constitution to revise the
35 selection process for the student member of the Board
36 of Governors of the State University System.

By Senator Montford

6-01131-12

20121508__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 7 of Article IX of the State Constitution to replace the president of the Florida Student Association or the equivalent as a member of the Statewide Board of Governors with the student body president of a state university.

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

That the following amendment to Section 7 of Article IX of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IX

EDUCATION

SECTION 7. State University System.-

(a) PURPOSES. In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) STATE UNIVERSITY SYSTEM. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) LOCAL BOARDS OF TRUSTEES. Each local constituent university shall be administered by a board of trustees

6-01131-12

20121508__

consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) STATEWIDE BOARD OF GOVERNORS. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fifteen ~~fourteen~~ citizens dedicated to the purposes of the state university system, one of whom must be the student body president of a state university. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law, except that the state university student body president appointed to the board shall serve a term of one year and is not

6-01131-12 20121508__
59 subject to senate confirmation. A student body president is not
60 eligible for appointment if the student body president appointed
61 to the board in the previous year was from the same state
62 university. The commissioner of education ~~and,~~ the chair of the
63 advisory council of faculty senates, or the equivalent, ~~and the~~
64 ~~president of the Florida student association, or the equivalent,~~
65 shall also be members of the board.

66 BE IT FURTHER RESOLVED that the following statement be
67 placed on the ballot:

68 CONSTITUTIONAL AMENDMENT

69 ARTICLE IX, SECTION 7

70 APPOINTMENT OF STUDENT BODY PRESIDENT TO BOARD OF GOVERNORS
71 OF THE STATE UNIVERSITY SYSTEM.—Proposing an amendment to the
72 State Constitution to remove the president of the Florida
73 Student Association, or the equivalent, as a member of the Board
74 of Governors of the State University System and to require that
75 the Governor appoint a state university student body president
76 to the Board of Governors. Specifically, the amendment requires
77 that a state university student body president must be one of 15
78 citizen members appointed to the Board of Governors by the
79 Governor, except the state university student body president is
80 not subject to confirmation by the Senate and the term of
81 appointment is 1 year. The amendment also provides that a
82 student body president of a state university is not eligible for
83 appointment if the student body president appointed to the Board
84 of Governors in the previous year was from the same state
85 university.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic Board of Governors Student Seat

Bill Number 8JR1508
(if applicable)

Name Asimina Boutoukas

Amendment Barcode _____
(if applicable)

Job Title Director, Office of Governmental Affairs

Address 2110 Jackson Bluff Rd Apt 4
Street

Phone 727 5049041

Tallahassee FL 32304
City State Zip

E-mail asiminaab@gmail.com

Speaking: For Against Information

Representing FSU 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 20 / 2012

Meeting Date

Topic _____

Bill Number 1508

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Student BOG Member

Bill Number 1508
(if applicable)

Name Chris Carmody

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 301 E. Pine St., Suite 1400

Phone 407-843-8880

Orlando FL 32801
City State Zip

E-mail ccarmody@gray-robinson.com

Speaking: For Against Information

Representing UCF SGA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1868

INTRODUCER: Community Affairs Committee and Senator Gardiner

SUBJECT: Federal Grants

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	Irwin	Cibula	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill requires a county, municipality, or special district to identify and disclose the projected, unfunded, long-term costs of each project funded by a federal grant prior to accepting such federal grant. The costs must be calculated from the inception of the project through the 2 fiscal years after the federal funds have been depleted. The unfunded costs may include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

A disclosure statement of the costs and a plan to fund the project after the depletion of the federal grant must be posted on the grantee's website 10 days before a vote to accept any moneys or 10 days before any action to authorize acceptance. If a special district does not operate a website, procedures are provided to have the disclosure statement posted on the website of either the district's local general-purpose government or the district's governing authority. Accountants conducting audits of counties, municipalities, or special districts will be required to determine compliance with the bill's provisions. The bill further provides that a person may file a civil action to enforce the disclosure and plan provisions.

This bill does not apply to federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds.

This bill amends section 218.39, Florida Statutes.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Intergovernmental Grant Impact on Future Periods

A recent working paper by West Virginia University economists Russell Sobel and George Crowley examined the impact of federal grants on state and local tax policy in future periods.¹ Their analysis concluded that grant funding to state and local governments results in higher own source revenue and taxes in the future that support the programs initiated with the federal grant moneys.² The authors further argue that:

[T]he recent large increase in federal grants to state and local governments that has occurred as part of the American Recovery and Reinvestment Act (ARRA) will have significant future tax implications at the state and local level as these governments raise revenue to continue these newly funded programs into the future. Federal grants to state and local governments have risen from \$461 billion in 2008 to \$654 billion in 2010. Based on our estimates, *future* state taxes will rise by between 33 and 42 cents for every dollar in federal grants states received today, while local revenues will rise by between 23 and 46 cents for every dollar in federal (or state) grants received today. Using our estimates, this increase of \$200 billion in federal grants will eventually result in roughly \$80 billion in future state and local tax and own source revenue increases. This suggests the true cost of fiscal stimulus is underestimated when the costs of future state and local tax increases are overlooked.³

Federal Aid to State and Local Governments by Program

The U.S. Census Bureau, Statistical Abstract for 2012, shows that Florida received \$22,686,000,000 in total federal aid for state and local governments in 2009.⁴ Selected federal department program total grant amounts and percentages of the overall total are shown in the table below.⁵

¹ Russell S. Sobel and George R. Crowley, *Do Intergovernmental Grants Create Ratchets in State and Local Taxes? Testing the Friedman-Sanford Hypothesis*, 25 (No. 10-51, August 2010) http://mercatus.org/sites/default/files/publication/Do%20Intergovernmental%20Grants%20Create%20Ratchets.WP_.Corrected.10.4.10_0.pdf (last visited February 16, 2012).

² *Id.*

³ *Id.*

⁴ U.S. Census Bureau, Statistical Abstract of the United States: 2012, *Table 434 Federal Aid to State and Local Governments – Selected Programs by State: 2009*, <http://www.census.gov/compendia/statab/2012/tables/12s0434.pdf> (last visited February 16, 2012).

⁵ *Id.*

Department	Total grant amount for 2009	% of total
Health and Human Services	\$13,573,000,000	59.8%
Education	\$2,201,000,000	9.7%
Transportation	\$2,038,000,000	9.0%
Housing and Urban Development	\$1,731,000,000	7.6%
Agriculture	\$1,418,000,000	6.3%
Labor	\$338,000,000	1.5%

Special Districts

Special districts are governed by the Uniform Special District Accountability Act of 1989 in ch. 189, F.S.⁶ s. 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose. A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.⁷ A special district does *not* include a school district, a community college district, a special improvement district, a municipal service taxing or benefit unit, or a political subdivision board of a municipality providing electrical service.⁸

The Special District Information Program (SDIP) maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.⁹ As of February 16, 2012, there were 1,636 special districts in this state.¹⁰ Examples of special districts include, but are not limited to, water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.¹¹

Local Government Annual Financial Audits

Section 218.39(1), F.S., provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within 9 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds.¹² The entities include:

- Each county, district school board, charter school, or charter technical center.
- Each city with revenues or expenditures and expenses of more than \$250,000.
- Each special district having revenues or expenditures and expenses of more than \$100,000.

⁶ Section 189.401, F.S.

⁷ Section 189.403(1), F.S.

⁸ *Id.*

⁹ Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited February 16, 2012).

¹⁰ Florida Department of Economic Opportunity, *Special District Statewide Totals*, <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited February 16, 2012).

¹¹ Florida Department of Economic Opportunity, *Special District Primary Functions Cross Reference List*, <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/functions.cfm> (last visited February 16, 2012).

¹² Section 218.39(1), F.S.

- Each city having revenues or expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the 2 preceding fiscal years.
- Each special district having revenues or expenditures and expenses between \$50,000 and \$100,000 which has not been audited within the 2 preceding fiscal years.¹³

The audit report must be filed with the Auditor General and must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.¹⁴ The Auditor General must notify the Legislative Auditing Committee (LAC) of any audit report that indicates an entity has failed to take full corrective action in response to a recommendation made in the 2 preceding financial audit reports.¹⁵

Upon being notified, LAC may direct the governing body of the audited entity to provide a written explanation for its failure to take corrective actions or subsequent plans for correction.¹⁶ If the explanation is not sufficient, LAC may require an appropriate official from the entity to appear before the committee.¹⁷ Should LAC determine that there is no justifiable reason for the entity to have not taken corrective action; LAC may proceed in accordance with s. 11.40(2), F.S.

- In the case of a local government entity or a district school board, LAC directs the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The LAC must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.¹⁸
- In the case of a special district, LAC must notify the Department of Economic Opportunity that the special district has failed to comply with the law. Failure of a special district to comply with actuarial and financial reporting requirements is deemed final action of the special district. The actuarial and financial reporting requirements are essential requirements of law. Remedy for noncompliance is by writ of certiorari.¹⁹
- In the case of a charter school or charter technical career center, LAC must notify the appropriate sponsoring entity that may terminate the charter.²⁰

III. Effect of Proposed Changes:

Section 1. Creates an undesignated section of law stating that before accepting federal grant funds, a county, municipality, or special district must identify and disclose the projected, unfunded, long-term costs of each project that is funded by a federal grant. The costs shall be

¹³ Nearly 300 special districts did not meet the audit threshold established in Section 218.39, F.S., for the 2008-09 fiscal year. E-mail from Marilyn Rosetti, Audit Manager, Local Government Reviews & Special Audits, State of Florida Auditor General, to John Toman, Legislative Analyst, Senate Committee on Community Affairs (Nov. 3, 2011) (on file with the Senate Committee on Judiciary).

¹⁴ Section 218.39(7), F.S.

¹⁵ Section 218.39(8), F.S.

¹⁶ Section 218.39(8), F.S.

¹⁷ Section 218.39(8)(b), F.S.

¹⁸ Section 11.40(2)(a), F.S.

¹⁹ Sections 189.421(2)-(3), F.S.

²⁰ Section 11.40(2)(c), F.S.

calculated from inception of the project through the 2 fiscal years after the federal funds have been depleted. Such unfunded costs include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

The projected, unfunded, long-term costs must be prominently disclosed by posting a disclosure statement on the website of the county, municipality, or special district at least 10 days before the county, municipality or special district votes to accept the federal grant or otherwise takes any other action to authorize acceptance of the federal grant. If a special district does not operate a website, procedures are provided to have the costs posted on the website of the district's local general-purpose government or governing authority. The disclosure statement must describe the project and must include a plan for funding the project for up to 2 fiscal years after the depletion of the federal grant.

This section of the bill further provides that a person may file a civil action to enforce the above provisions. If a civil action is filed against a county, municipality, or special district to enforce the above provisions and the court finds that the county, municipality, or special district failed to comply, the court must assess an award against the appropriate county, municipality, or special district for reasonable costs of enforcement, including reasonable attorney fees.

Certified public accountants conducting audits of counties, municipalities, or special districts pursuant to s. 218.39, F.S., must report, as part of the audit, whether the county, municipality, or special district has complied with the provisions of the bill. This bill does not apply to federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds.

Section 2. Amends s. 218.39, F.S., to require the Auditor General to notify the Legislative Auditing Committee (LAC) of any audit report that indicates that an audited entity has failed to comply with the required disclosures relating to the receipt of federal funds. If an entity has not complied, LAC may require a written statement of explanation from the entity and could may require an appropriate entity official to appear before the committee. If the LAC determines that there is no justifiable reason for the failure to prepare a disclosure statement or that the entity has failed to comply with the explanation or appearance requests, the committee may proceed in accordance with s. 11.40(2), F.S.

Section 3. Provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the state Constitution states that “[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest” and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption.²¹ Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.²²

It is not anticipated that the costs to comply with this act will exceed \$1.88 million, however, if they do, the law may be unenforceable unless passed by two-thirds in each house of the Legislature.

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:

Residents of the state may be afforded greater transparency related to the federal grant acceptance process of counties, municipalities and special districts.

C. Government Sector Impact:

Counties, municipalities and special districts may incur indeterminate costs related to reporting and planning development requirements as well as the auditing determinations required by the bill. The Auditor General and the Legislative Auditing Committee will experience indeterminate costs associated with their new oversight roles.

The Revenue Estimating Conference has not analyzed the impact of this bill.

²¹ FLA. CONST. art. VII, s. 18.

²² Comm. on Community Affairs, The Florida Senate, *Insignificant Fiscal Impact*, 2 (Interim Report 2012-115) (September 2011).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Community Affairs on January 30, 2012:

- Establishes that the calculation of unfunded costs of a federal project must cover the time period from the inception of the grant through 2 fiscal years after depletion of the grant.
- Provides a procedure for special districts to post disclosures and plans if they do not have a website.
- Requires a determination of compliance with the CS's provisions to be included in a county, municipality, or special district financial audit.
- Requires the Auditor General to notify the Legislative Auditing Committee (LAC) of compliance failures. Under certain circumstances, the LAC may proceed in accordance with the provisions of s. 11.40, F.S.

B. Amendments:

None.



263190

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete lines 36 - 43

and insert:

federal funds. The costs shall be calculated from inception of the project through the 2 fiscal years after the fiscal year during which the federal funds will be depleted.

(b) The costs of activities not paid by federal funds may include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

(c) Such unfunded costs shall be disclosed by prominently



719112

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete lines 63 - 64
and insert:

for funding the project for up to 2 fiscal years after the
fiscal year during which the federal grant funds will be
depleted.

By the Committee on Community Affairs; and Senator Gardiner

578-02596-12

20121868c1

A bill to be entitled

An act relating to federal grants; requiring a county, municipality, or special district to identify and disclose the costs of a federally funded project which will not be funded by the federal grant; requiring the entity to disclose a plan for funding the project after the depletion of federal funds; authorizing a person to file a civil action to enforce the disclosure of unfunded, long-term costs of a county, municipality, or special district project funded by a federal grant; requiring the court to assess reasonable costs, including attorney fees, against the county, municipality, or special district if the court finds that the county, municipality, or special district did not disclose the unfunded costs of a project funded by a federal grant; requiring auditors to report on compliance; providing an exception for federal grants associated with natural disasters, grants involving the Federal Emergency Management Agency, grants received from the Department of Homeland Security, or Medicaid funds; amending s. 218.39, F.S.; requiring that the Auditor General notify the Legislative Auditing Committee of any audit report indicating that an audited entity has failed to comply with the disclosure requirements of the act; providing an effective date.

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

Page 1 of 4

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

578-02596-12

20121868c1

Section 1. Disclosure of unfunded, long-term costs of federal grant programs.

(1) (a) Before accepting a federal grant, a county, municipality, or special district shall identify and disclose, for each project that is funded by the federal grant, the costs of the activities of the project which will not be funded by the federal funds. The costs shall be calculated from inception of the project through the 2 fiscal years after the federal funds have been depleted.

(b) The costs of activities not paid by federal funds may include, but are not limited to, required state and local matching funds, projected payroll costs, maintenance costs, and costs to operate and administer the project.

(c) Such unremitted costs shall be disclosed by prominently posting a disclosure statement on the website of the county, municipality, or special district undertaking the project or activity. The statement shall be posted at least 10 days before the governing body of the county, municipality, or special district votes to accept the federal grant or otherwise takes any other action to authorize acceptance of the federal grant.

(d) If a special district does not operate an official website, the special district shall, within a reasonable period of time as established by the local general-purpose government or governments in which the special district is located or the local governing authority to which the district is dependent, transmit the disclosure statement to the manager or administrator of the local general-purpose government or the local governing authority. Thereafter, the manager or administrator shall post the special district disclosure

Page 2 of 4

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

578-02596-12 20121868c1

59 statement on the website of the local general-purpose government
60 or governing authority.

61 (e) The disclosure statement for a county, municipality, or
62 special district shall describe the project and include a plan
63 for funding the project for up to 2 fiscal years after the
64 federal grant funds have been depleted.

65 (2) A person may file a civil action to enforce compliance
66 with subsection (1). If a civil action is filed against a
67 county, municipality, or special district and the court finds
68 that the county, municipality, or special district failed to
69 comply with subsection (1), the court shall assess and award
70 against the appropriate county, municipality, or special
71 district the reasonable costs of enforcing subsection (1),
72 including reasonable attorney fees.

73 (3) Certified public accountants conducting audits of
74 counties, municipalities, or special districts pursuant to s.
75 218.39, Florida Statutes, shall report, as part of the audit,
76 whether or not the county, municipality, or special district has
77 complied with this section.

78 (4) This section does not apply to federal grants
79 associated with natural disasters, grants involving the Federal
80 Emergency Management Agency, grants received from the Department
81 of Homeland Security, or Medicaid funds.

82 Section 2. Present subsections (9) through (12) of section
83 218.39, Florida Statutes, are renumbered as subsections (10)
84 through (13), respectively, and a new subsection (9) is added to
85 that section, to read:

86 218.39 Annual financial audit reports.—

87 (9) The Auditor General shall notify the Legislative

578-02596-12 20121868c1

88 Auditing Committee of any audit report that indicates that an
89 audited entity has failed to comply with the required
90 disclosures relating to the receipt of federal funds.

91 (a) The committee may direct the governing body of the
92 audited entity to provide to the committee the required
93 disclosure statement or a written statement explaining why the
94 required disclosure statement was not prepared.

95 (b) If the committee determines that the written statement
96 is not sufficient, it may require the chair of the governing
97 body of the local governmental entity or the chair's designee,
98 or the elected official of each county agency or the elected
99 official's designee, as appropriate, to appear before the
100 committee.

101 (c) If the committee determines that an audited entity has
102 failed to prepare a required disclosure statement for which
103 there is no justifiable reason for not preparing such, or has
104 failed to comply with committee requests made pursuant to this
105 subsection, the committee may proceed in accordance with s.
106 11.40(2).

107 Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Federal Grants

Bill Number 1868
(if applicable)

Name David Cruz

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address P.O. Box 1757

Phone 305-322-3643

Tallahassee FL 32302
City State Zip

E-mail dcruz@FCCities.com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 Judiciary Committee

BILL: CS/CS/SB 680

INTRODUCER: Judiciary Committee, Regulated Industries Committee, and Senator Bogdanoff

SUBJECT: Residential Properties

DATE: February 20, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Munroe	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill revises several provisions relating to the governance of condominium, cooperative, and homeowners' associations.

The bill prohibits the enforcement of the Phase II Firefighter's Service requirement for existing elevators until the elevator is replaced or the elevator requires major modification. This requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.

Regarding condominiums, the bill:

- Clarifies that broadcast notice by closed-circuit television may be made in lieu of a notice posted physically on the condominium property.
- Clarifies that the board must main a copy of a board member's post election certification for at least 5 years or the duration of the board member's tenure, whichever is longer;
- Revises the hurricane protection provisions to reference code-compliant doors, impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection

and clarifies the conditions for a unit owner to receive credit for the prior installation of hurricane protection;

- Extends to 10 years from 7 years the period for completion of all phases of a phase condominium;
- Provides for the creation of a secondary condominium within a primary condominium;
- Permits officers or full-time employees of the condominium ombudsman's office to engage in another profession or any other business that is not directly or indirectly related, or conflicts with, his or her work in the ombudsman's office; and
- Extends the time period to be classified as a bulk buyer or bulk assignee to July 1, 2015 from July 1, 2012.

Regarding cooperative associations, the bill provides that meetings of the board held for the purpose of discussing personnel matters are not subject to the open meetings requirement. It also expands the types of official records that are not accessible to members of the association, including records containing specified personal identifying information. The bill also requires newly elected or appointed members of the cooperative board to provide a post-election certification that they have read the governing documents of the association, or alternatively, to submit a certification showing the satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.

Regarding homeowners' associations, the bill includes the personnel records of the management company among the records that are not accessible to the association's members.

Regarding cooperative and homeowners' associations, the bill provides a process for amending association documents without the approval of all mortgagees.

Regarding condominium, cooperative, and homeowners' associations, the bill:

- Requires that any challenge to the election process be commenced within 60 days after the election results are announced;
- Prohibits election recalls when there are less than 60 days before the next election;
- Makes unit owners and homeowners jointly and severally liable with the previous owner for not only all unpaid assessments, but also late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect all funds that came due up to the time of transfer of title; and
- Provides that the suspension of an owner's rights does not apply to limited common elements that are intended to be used only by that owner, common elements needed to access the unit or home, utility services to the unit or home, parking spaces, or elevators, and that suspended interests are not needed for establishing a quorum, conducting an election, or obtaining member approval.

The bill provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 399.02, 468.433, 718.112, 718.113, 718.115, 718.116, 718.303, 718.403, 718.5011, 718.707, 719.104, 719.1055, 719.106, 719.108, 719.303, 720.303, 720.305, 720.306, and 720.3085.

The bill creates section 718.406, Florida Statutes.

II. Present Situation:

Elevator Regulation

Chapter 399, F.S., the “Elevator Safety Act,”¹ establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of ch. 399, F.S. The department has rulemaking authority to enforce the provisions of ch. 399, F.S.² The Elevator Safety and Technical Advisory Council (advisory council) within the department provides technical assistance to the division.³ It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.⁴ As of July 30, 2011, there were 47,331 licensed elevators in the state.⁵

Section 399.02(1), F.S., requires the elevator safety code to be the same as or similar to the code established by the American Society of Mechanical Engineers (ASME).⁶ The codes established by ASME provide the minimum model standards for the installation, operation, and maintenance of elevators. The codes established by ASME are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 and Standard ASME A18 serve as the basis for the Florida Elevator Safety Act and Florida’s elevator safety code.⁷

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. By example:

- ASME A17.1 (2004), provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.

¹ See s. 399.001, F.S.

² See s. 399.10, F.S.

³ See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

⁴ See s. 399.01(6), F.S.

⁵ See *Annual Report, Fiscal Year 2010-2011*, Division of Hotels and Restaurants, Department of Business and Professional Regulation, p. 24. A copy is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2010_11.pdf

(last visited Feb. 10, 2012).

⁶ The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

⁷ Section 399.02(1), F.S.

- ASME A17.2 (2004), provides a guide for the inspection of elevators, escalators, and moving walks.
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.
- The ASME/ANSI A18.1 “Safety Standard for Platform Lifts and Stairway Chairlifts” provides minimum guidelines for the design, manufacture, and installation of platform lifts and stairway chairlifts.⁸

The Elevator Safety Code requires any alteration, relocation or reclassification of an existing elevator to be in compliance with the edition of the Florida Building Code which is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.⁹ Specifically, ASME A17.3 requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.¹⁰

For existing elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility licensed under ch. 651, F.S., or a retirement community with apartments, s. 399.02(9), F.S., prohibits the enforcement of the Phase II Firefighters’ Service requirements, as amended into ASME A17.1 and A17.3. The Phase II Firefighter’s Service requirements permit the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.¹¹ The Phase II Firefighters’ Service requirements cannot be enforced until July 1, 2015, or until the elevator is replaced or requires major modification before July 1, 2015. Section 399.02(9), F.S., does not restrict the elevator owner’s ability to apply for a variance from the Phase II Firefighters’ Service or the division’s ability to issue variances. Section 399.02(9), F.S., requires the division to adopt rules to administer the exemption.

According to the department, the Division of Hotels and Restaurants is in the rulemaking process to define the term “major modification.”

Community Association Management

Community association managers are regulated and licensed pursuant to part VIII of ch. 468, F.S. To be licensed, a community association manager must satisfactorily complete an examination for licensure. Under s. 455.229(1), F.S., the information supplied on the application for a community

⁸ The Bureau of Elevator Safety in the Department of Business and Professional Regulation has adopted and incorporated by reference ASME A17.1, ASME A17.3, and ASME 18.1 in rule 61C-5.001, F.A.C.

⁹ See ASME A17.3.

¹⁰ See *City of Miami Beach v. Dept. Business and Professional Regulation*, Case No. 03-5188RU, Final Order (Fla. DOAH 2009).

¹¹ Rule 3.11.3, A.S.M.E. A17.3 (1996 edition). On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators. On April 2, 2008, the Bureau of Elevator Safety in the Department of Business and Professional Regulation adopted the ASME elevator standards that were incorporated by reference in ch. 30, Florida Building Code. See Florida Building Code (2010), ch. 30, Elevators and Conveying Systems at http://www2.iccsafe.org/states/florida_codes/ (last visited Feb. 13, 2012)..

association manager's license is public information. According to the department, most applicants supply their home address as contact information for the department.¹²

Condominiums

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹³ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.¹⁴ A declaration is like a constitution in that it:

strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹⁵

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”¹⁶ A declaration of condominium may be amended as provided in the declaration.¹⁷ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.¹⁸ Condominiums are administered by a board of directors referred to as a “board of administration.”¹⁹

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.²⁰ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.²¹

¹² *Bill Analysis for SB 680*, Office of Legislative Affairs, Department of Business and Professional Regulation, October 17, 2011.

¹³ Section 718.103(11), F.S.

¹⁴ Section 718.104(2), F.S.

¹⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹⁶ Section 718.104(5), F.S.

¹⁷ See s. 718.110(1)(a), F.S.

¹⁸ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

¹⁹ Section 718.103(4), F.S.

²⁰ Section 718.501(1), F.S.

²¹ Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division with the power to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Post-Election Certification of Condominium Board Members

Requirements for association bylaws are outlined in s. 718.112, F.S.

Section 718.112(2)(d)3.b., F.S.,²² outlines a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.²³ The curriculum must be administered by a condominium education provider approved by the division.²⁴ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.²⁵ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment.²⁶ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.²⁷

Condominium, Cooperative, and Homeowners' Associations' Voting Interests

For condominium associations, s. 718.103(30), F.S., defines the term "voting interests" to mean:

the voting rights distributed to the association members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific

²² Section 718.112(2)(d)3.b., F.S.

²³ Id. (The department's Internet site provides a listing of approved educational providers. *See* Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (last visited Feb. 13, 2012).

²⁴ Section 718.112(2)(d)3.b., F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

For cooperative associations, s. 719.103(28), F.S., defines the term “voting interests” to mean, “the voting rights distributed to the association members as provided for in the articles of incorporation.” For homeowners’ association, the term “voting interests” is defined in s. 720.301(13), F.S., as “the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.”

Condominium, Cooperative, and Homeowners’ Associations-Recall of Board Members

Section 718.112(2)(j), F.S., outlines the procedure for the recall of board members. Any member of the board may be recalled and removed from office, with or without cause, by a majority of all of the voting interests. If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within 5 business days in order to either certify the recall or not. If the board fails to duly notice and hold a board meeting within 5 business days, the recall will be deemed effective. Recall disputes are subject to arbitration by the division under s. 718.1255, F.S., which relates to the arbitration and mediation of disputes between condominium associations and members.

Comparable provisions for the recall of the board members of cooperative associations are provided in s. 719.106(1)(f), F.S., and board members of homeowners’ associations in s. 720.303(10), F.S.

Condominiums-Hurricane Protection

Section 718.113(5), F.S., specifies the condominiums’ powers and duties in regards to the installation and maintenance of hurricane protection. A condominium association must adopt hurricane shutter specifications for each building within each condominium operated by the association. The board may, subject to approval by a majority of the voting interests, install hurricane shutters, impact glass, code-compliant windows, or other types of hurricane protection.²⁸ The association is responsible for the maintenance, repair, and replacement of other hurricane protection for the property if the association is responsible for the maintenance of such property under the declaration of condominium.²⁹ The association may operate the hurricane shutters without the permission of the unit owners only if such operation is necessary to protect the association and condominium property.

Section 718.115(1)(e), F.S., provides that the installation, replacement, operation, repair, and maintenance of hurricane shutter and other hurricane protection are a common expense, unless otherwise specified in the declaration of condominium. Unit owners who previously installed their own hurricane protection are entitled to a credit equal to the pro rata portion of the assessed installation cost assigned to each unit and for the pro rate share of expenses for hurricane protection installed on common elements and association property.³⁰

²⁸ Section 718.113(5)(a), F.S.

²⁹ Section 718.113(5)(b), F.S.

³⁰ Section 718.115(1)(e), F.S.

Condominium – Assessments and Foreclosures

Current law defines an “assessment” as the “share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”³¹

“Special assessment” is defined to mean, “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”³²

“[A] unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is *without prejudice*³³ to any right the owner may have to recover from the previous owner the amounts paid by the owner.”³⁴

If a first mortgagee, (e.g., the mortgage lending institution) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.³⁵ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.³⁶ In the foreclosure action, the association may defend its claims for unpaid assessments. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.³⁷ The successor or assignee, with respect to the first mortgage, includes only a subsequent holder of the first mortgage.³⁸

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.³⁹ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year.⁴⁰ The association may also charge an administrative late fee of up to the greater of \$25 or five percent of each installment of the assessment for each delinquent installment for which the payment is late.⁴¹ Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney’s fees incurred in collection, and then to the delinquent assessment.⁴²

³¹ Section 718.103(1), F.S.

³² Section 718.103(24), F.S.

³³ The term “without prejudice” means “[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party <dismissed without prejudice>.” BLACK’S LAW DICTIONARY (9th ed. 2009).

³⁴ Section 718.116(1)(a), F.S.

³⁵ Section 718.116(1)(b), F.S.

³⁶ *Id.*

³⁷ Section 718.116(1)(e), F.S.

³⁸ Section 718.116(1)(g), F.S.

³⁹ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

⁴⁰ Section 718.116(3), F.S.

⁴¹ *Id.*

⁴² *Id.*

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines for failure to comply with any provision of the declaration, the association's bylaws, or reasonable rules of the association by a unit owner, or a unit owner's tenant, guest, or invitee. A fine may not exceed \$100 per violation, but may be levied on each day of a continuing violation.⁴³ A fine does not become a lien on the property. Before a fine may be imposed, notice and an opportunity for a hearing must be provided.⁴⁴ A fine against a unit owner may not in the aggregate exceed \$1,000.⁴⁵

Section 718.303(3)(a), F.S., provides that the association may suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. Section 718.303(3)(a), F.S., does not specify whether the association can suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators.

Section 718.303(4), F.S., authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. A suspension ends upon full payment of all obligation currently due or overdue to the association. The voting interest or consent right of a suspended unit owner may not be counted toward the total number of voting interests for any purpose, including, but are not limited to, the number of voting interests necessary to constitute a quorum, conduct an election, or approve an action.⁴⁶ Section 718.303, F.S., also provides that the notice and hearing requirement for fines in s. 718.303(3), F.S., do not apply to suspensions under this subsection.⁴⁷

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

Phase Condominiums

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.⁴⁸

⁴³Section 718.303(3), F.S.

⁴⁴ Section 718.303(3)(b), F.S.

⁴⁵ Section 718.303(3), F.S.

⁴⁶ Section 718.303(5), F.S.

⁴⁷ *Id.*

⁴⁸ Section 718.403(1), F.S.

Condominium Ombudsman

Section 718.5011, F.S., provides for the appointment of a condominium ombudsman by the Governor. The ombudsman acts as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties.⁴⁹ The ombudsman develops policies and procedures to assist parties in the understanding of their rights and responsibilities set forth in ch. 718, F.S., and the condominium documents governing their respective association.⁵⁰ The ombudsman also monitors and reviews procedures and disputes concerning condominium elections or meetings, and may recommend to the division whether to pursue enforcement action where there is reasonable cause to believe that election misconduct has occurred.⁵¹ The ombudsman may also make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.⁵² The ombudsman may also assist in the resolution of disputes.⁵³

Section 718.5011(2), F.S., prohibits any officer or full-time employee of the ombudsman's office from actively engage in any other business or profession.

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704, F.S., provides for the assignment and assumption of developer rights. Section 718.504, F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer

⁴⁹ Section 718.5012(4), F.S.

⁵⁰ *Id.*

⁵¹ Section 718.5012(5), F.S.

⁵² Section 718.5012(6), F.S.

⁵³ Section 718.5012(9), F.S.

unless the parcels were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁵⁴

Cooperatives – Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed \$100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed \$1,000 in the aggregate.

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.⁵⁵

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”⁵⁶ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.⁵⁷

Homeowners’ associations are administered by a board of directors whose members are elected.⁵⁸ The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include

⁵⁴ See ss. 719.106(1)(g) and 719.107, F.S.

⁵⁵ See s. 720.302(1), F.S.

⁵⁶ Section 720.301(9), F.S.

⁵⁷ Section 720.302(5), F.S.

⁵⁸ See ss. 720.303 and 720.307, F.S.

recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁵⁹ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶⁰

III. Effect of Proposed Changes:

Elevators

The bill amends s. 399.02(9), F.S., to extend the enforcement exemption by deleting the July 1, 2015, end date for the Phase II Firefighters' Service exemption. The bill maintains the requirement that elevators must comply with Phase II Firefighters' Service when they are replaced or the elevator requires major modification.

Condominium –Meetings of Unit Owners

The bill amends s. 718.112(2)(d)2., F.S., to include the articles of incorporation, in addition to the condominium association's bylaws, as the governing document which may provide for two-year terms for association board members. It also deletes the additional requirement that the majority of the voting interests would also have to approve the staggered terms by a majority of the total voting interests.

The bill amends s. 718.112(2)(d)3., F.S., to clarify that broadcast notice on a closed-circuit television system may be made in lieu of a notice posted physically on the condominium property.

Condominiums-Elections

The bill amends s. 718.112(2)(d)4., F.S., to exempt associations that govern timeshare condominiums from the prohibition against the use of proxies to elect members of the board.

The bill amends s. 718.112(2)(d)4.b., F.S., relating to the post-election certification of condominium board members, to clarify that the board maintain a copy of the written certification for inspection by members for 5 years or the duration of the board member's tenure, whichever is longer. The bill provides a comparable requirement for cooperative associations in s. 719.106(1)(d)1.b., F.S., and homeowners' associations in s. 720.306(9)(d), F.S.

The bill creates s. 718.112(2)(d)4.c., F.S., to require that any challenge to the election process be commenced within 60 days after the election results are announced. This conforms with the bill's amendment to s. 719.106(1)(d)1.b., F.S. relating to challenges to the election's process for cooperative associations.

The bill creates s. 718.112(2)(j)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file

⁵⁹ See ss. 720.301 and 720.303, F.S.

⁶⁰ Section 720.303(1), F.S.

the required recall petition, the unit owner representative⁶¹ may file a petition pursuant to s. 718.1255, F.S., challenging the board's failure to act. The bill requires that the petition be filed within 60 days after the expiration of the applicable 5-full-business-day period.⁶² The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 718.112(2)(j)7. and 8., F.S., to revise the procedure for recall elections. Section 718.112(2)(j)7., F.S., provides that a board member who has been recalled may file a petition pursuant to s. 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified⁶³ and the association and the unit owner representative must be named as the respondents.

Section 718.112(2)(j)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or less until the next scheduled reelection of the board member sought to be recalled or when 60 or less have elapsed since the election of the board member sought to be recalled.

The amendment to s. 718.112(2)(j), F.S., is comparable to bill's board member recall limitations provided in s. 719.106(1)(f), F.S., for cooperatives and in s. 720.303(10)(g), F.S., for homeowners' associations.

Condominiums- Hurricane Protection

The bill amends the hurricane protection provisions in s. 718.113(5), F.S., to reference code-compliant doors, impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection.

The bill amends s. 718.115(1)(e), F.S., relating to the common expenses for hurricane protection, to reference impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection.

The bill also amends s. 718.115(1)(e), F.S., to clarify that a unit owner will receive credit when the shutters are installed. It provides that unit owners who previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code are entitled to receive a credit when that hurricane protection is installed. It provides that unit owners who have installed other types of code-compliant hurricane protection that comply with the current applicable building code are entitled to receive a credit when the same type of other code-compliant hurricane protection is installed.

The bill deletes the reference to laminated glass architecturally designed to function as hurricane protection.

⁶¹ Rule 61B-23.0027(3)(b)1., F.A.C., requires that a unit owner representative must be elected or appointed by the presiding officer at a recall meeting of the board "to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall."

⁶² The board has 5 business days to certify the recall or file a petition challenging the recall. If the board fails to act within the 5 days, the recall is deemed effective.

⁶³ *Id.*

Condominiums-Assessments

The bill amends s. 718.116(1)(a), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect all funds that came due up to the time of transfer of title. The bill provides a comparable provision for cooperatives in s. 719.108(1), F.S., and homeowners' associations in s. 720.3085(2)(b), F.S.

Condominiums-Sanctioning Owners and Occupants

The bill amends s. 718.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill amends s. 718.303(5), F.S., which relates to the suspension of a unit's or member's voting rights due to nonpayment of monetary obligations, to provide that the number needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.

The bill provides similar provisions for the suspension of rights in ss. 719.303(3) and (5), F.S., for cooperative associations and s. 720.305(2)(a) and (5) for homeowners' associations.

Phase Condominiums

The bill amends s. 718.403(1), F.S., to permit condominiums to extend the 7-year period for completion of all phases of a phase condominium. The extension must be by an amendment to the declaration approved by the unit owners. An amendment to extend the 7-year period may be submitted for approval only during the last 3 years of the 7-year period. The amendment must describe the time period in which all phases will be completed, but such period may not exceed 10 years from the date of the recording of the original declaration of condominium. An amendment to extend the 7-year period is not subject to the limitations in s. 718.110(4), F.S.⁶⁴

Secondary Condominiums

The bill creates s. 718.406, F.S., to provide for the creation of condominiums within a condominium parcel. This provision addresses the relationship between the primary condominium and the secondary condominium units.

Section 718.406(3), F.S., provides that, unless the declaration of the primary condominium provides for the creation of secondary condominium on a condominium parcel, a secondary

⁶⁴ In pertinent part, s. 718.110(4), F.S., prohibits amendments that materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which unit owners share the common expenses, own the common surplus, and which provides that the acquisition of property by the association and material alterations or substantial additions to such property or the common elements do not constitute a material alteration or modification of the appurtenances to the units. In current law, s. 718.110(4), F.S., also provides that a declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

condominium may not be created unless the record owners of a majority of the condominium parcels execute an amendment to the primary declaration.

Section 718.406(4), F.S., provides that, where the consent of the primary condominium association is required to create a secondary condominium, only the approval of a majority of the board of directors of the primary condominium association shall be required unless the primary condominium declaration provides otherwise. It provides that only the lienholders of the subdivided parcel upon which the secondary condominium will be created, the owner of that parcel, and the board of the primary condominium shall have the right to approve the creation of the secondary condominium and the contents of the secondary condominium declaration. It also provides that the recording of the secondary condominium declaration is only effective if it evidences the approval of the lienholders of the subdivided parcel, the owner of that parcel, and the board of the primary condominium.

Section 718.406(5), F.S., provides that a unit owner in a secondary condominium is governed by both the declaration of condominium for the primary condominium and the declaration of the second condominium.

Section 718.406(6), F.S., provides that the primary condominium may be responsible for the insurance of both the primary and secondary condominium if the primary condominium declaration permits. Section 718.406(7), F.S., provides that the board of directors of the primary condominium association may adopt hurricane shutter specifications for both the primary and secondary condominium.

Section 718.406(8), F.S., provides that an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium to receive notice of a foreclosure action against the secondary condominium. If registered, the primary condominium association must give at least 30 days notice before instituting a foreclosure action. The bill provides for the payment by the registered owner of the unit of their proportional share of the amount of delinquent assessments attributable to the unit. Upon payment of delinquent assessments, the primary association must promptly modify or release the record of lien on the primary condominium so that the lien no longer encumbers the secondary condominium unit. Alternatively, the registered owner may pay all delinquent assessments and seek reimbursement of the amounts paid from the secondary association.

Section 718.406(9), F.S., provides that the primary declaration controls any conflict between the primary and secondary condominium declarations. Section 718.406(10), F.S., provides that common expenses due to the primary condominium from the secondary condominium are a common expense of the secondary condominium.

Condominium Ombudsman

The bill amends s. 718.5011(2), FS, to permit officers or full-time employees of the ombudsman's office to engage in another profession or any other business that is not directly or indirectly related, to or conflicts with, his or her work in the ombudsman's office.

Distressed Condominium Relief Act

The bill amends s. 718.707, FS, to extend the period to be classified as a bulk buyer or bulk assignee to July 1, 2015 from July 1, 2012.

Cooperative-Official Records

The bill amends s. 719.104(2)(c), F.S., relating to the official records of the cooperative association to add the following information to the list items that are not accessible to members of the association:

- Records protected by the lawyer-client privilege as provided in s. 90.502, F.S. and work product privilege.
- Personnel records of association employees, such as disciplinary, payroll, health, and insurance records. However, the unit owners would have access to written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner which are not provided to fulfill the association's notice requirements, and other identifying personal information except for the person's name, unit designation, mailing address, and property address.
- Electronic security measures used to safeguard data, including passwords.
- Software and operating systems used by the association which allow manipulation of data.

Amendment of Cooperative Documents

The bill creates s. 719.1055, F.S., to provide the legislative findings that procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees are unreasonable and are a substantial burden on cooperative unit owners and associations. The bill provides that there is a compelling state interest in enabling cooperative association members to approve amendments. This provision will facilitate attempts by cooperative shareholders to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision in declarations, articles of incorporation, or bylaws of a condominium association recorded on or after July 1, 2012, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the cooperative property for those mortgages. Any such provisions or amendments recorded prior to July 1, 2012, will remain enforceable. As to provisions or amendments created after July 1, 2012, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders

of mortgages or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in the in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2012, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There is a comparable provision for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for homeowners' associations in s. 720.306(1)(d), F.S.

Cooperatives-Meetings

The bill amends s. 719.106(1)(c), F.S., to provide that the requirement of open meeting of the board does not apply to meetings held for the purpose of discussing personnel matters.

Cooperatives-Elections Process Challenges

The bill amends s. 719.106(1)(d)1.b., F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 720.306(9)(a), F.S., for homeowners' associations.

Post-Election Certification of Cooperative Board Members

The bill creates s. 719.106(1)(d)1.b., F.S., to provide a post-election certification requirement for newly elected board members. Pursuant to this section, within 90 days after being elected or appointed, a new board member must certify that he or she:

- Has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment. The curriculum must be administered by a condominium education provider approved by the division.⁶⁵ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum. If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for 5 years after a director's election or appointment, or the duration of director's uninterrupted tenure, whichever is greater. The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.

This provision is similar to the post-election certification requirement for condominium board members provided in s. 718.112(2)(d)4.b., F.S., as amended by this bill. The bill provides a comparable requirement for homeowners' associations in s. 720.306(9)(d), F.S.

Cooperatives-Recall Elections

The bill creates s. 719.106(1)(f), F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 719.1255, F.S., challenging the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 719.106(1)(f)7. and 8., F.S., to revise the procedure for recall disputes. Section 719.106(1)(f)7., F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to s. 719.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 719.106(1)(f)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or less until the next scheduled reelection of the board member sought to be recalled or when 60 or less have elapsed since the election of the board member sought to be recalled.

These provisions are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 720.303(10)(g), F.S., for homeowners' associations.

Cooperatives-Assessments

⁶⁵ Section 718.112(2)(d)3.b., F.S.

The bill amends s. 719.108(1), F.S., F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect all funds that came due up to the time of transfer of title. The bill provides a comparable provision for condominium associations in s. 18.116(1)(a), F.S., and homeowners' associations in s. 720.3085(2)(b), F.S.

Cooperative-Sanctioning Owners and Occupants

The bill amends s. 719.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill amends s. 719.303(5), F.S., which relates to the suspension of a unit's or member's voting rights due to nonpayment of monetary obligations, to provide that the number needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.

The bill provides similar provisions for the suspension of rights in ss. 718.303(3) and (5), F.S., for condominium associations and ss. 720.305(2)(a) and (5), F.S., for homeowners' associations.

Homeowners' Associations-Official Records

The bill amends s. 720.303, F.S., to include the personnel records of the management company among the records that are not accessible to the association's members. Current law only references the personnel records of the association.

Homeowners' Associations-Recall Elections

The bill creates s. 720.303(10)(g), F.S., to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 718.1255, F.S., to challenge the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates ss. 720.303(10)(k) and (l), F.S., to revise the procedure for recall disputes. Section 720.303(10)(k), F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to ss. 718.112(2)(j) and 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 720.303(10)(l), F.S., provides that the division may not accept for filing a recall petition when there are 60 or less until the next scheduled reelection of the board member sought to be recalled or when 60 or less have elapsed since the election of the board member sought to be recalled.

These provisions are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 719.106(1)(f), F.S., for cooperative associations.

Homeowners' Associations-Sanctioning Owners and Occupants

The bill amends s. 720.305(2), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill amends s. 720.305(2)(a), F.S., which relates to the suspension of a unit owner's voting rights due to nonpayment of monetary obligations, to provide that the number needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.

The bill provides similar provisions for the suspension of rights in ss. 718.303(3) and (5), F.S., for condominium associations and ss. 719.303(3) and (5), F.S., for cooperative associations.

Amendment of Homeowner Association Documents

The bill creates s. 720.306(1)(d), F.S., to provide the legislative findings that procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees are unreasonable and are a substantial burden on homeowners' and associations. The bill provides that there is a compelling state interest in enabling homeowners' association members to approve amendments. This provision would facilitate attempts by homeowners to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision or amendment to declarations, articles of incorporation, or bylaws of a homeowners' association recorded on or after July 1, 2012, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the association property for those mortgages. Any such provisions or amendments recorded prior to July 2012, would remain enforceable. As to provisions or amendments created after July 1, 2012, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2012, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There is a comparable provisions for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for cooperative associations in s. 720.306(1)(d), F.S.

Homeowners' Associations-Elections Process Challenges

The bill amends s. 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 719.106(1)(d)1.b., F.S., for cooperative associations.

Homeowners' Associations-Assessments

The bill amends s. 720.3085(2)(b), F.S., to provide that a home owner is jointly and severally liable with the previous owner for not only all unpaid assessments, but also late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect all funds that came due up to the time of transfer of title. The bill provides a comparable provision for condominiums in s. 718.116(1)(a), F.S., and cooperatives in s. 719.108(1), F.S.

Effective Date

The bill provides an effective date of July 1, 2012.

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. 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 Judiciary on February 20, 2012:

The bill no longer limits the ability of the Department of Business and Professional Regulation to publish a community association manager licensee's personal home address.

CS by Regulated Industries on January 26, 2012:

The bill amends s. 718.112(2)(d), F.S., to include the articles of incorporation, in addition to the condominium association's bylaws, as the governing document that may provide for staggered two-year terms for association board members. It also deletes the additional requirement that the majority of the voting interests would also have to approve the staggered terms by a majority of the total voting interests.

The bill amends s. 718.112(2)(d)4., F.S., to exempt associations that govern timeshare condominiums from the prohibition against the use of proxies to elect members of the board.

The bill amends s. 718.406, F.S., to reference the creation of secondary condominiums upon condominium parcels instead of upon condominium units.

The bill does not create s. 718.406(3), F.S., to provide that unless the declaration of condominium of the primary condominium provides otherwise, the consent of the primary condominium unit owners to the creation of the secondary condominium is not

required to create a secondary condominium. Instead, the bill amends this subsection to provide that, unless the declaration of the primary condominium provides for the creation of secondary condominium on a condominium parcel, a secondary condominium may not be created unless the record owners of a majority of the condominium parcels execute an amendment to the primary declaration.

The bill creates s. 718.406(4), F.S., to provide that only the lienholders of the subdivided parcel upon which the secondary condominium will be created, the owner of that parcel, and the board of the primary condominium shall have the right to approve the creation of the secondary condominium and the contents of the secondary condominium declaration. The bill includes the board of the primary condominium among those whose approval is required for the effective recording of the declaration for the secondary condominium. The bill only referenced the owner of the subdivided parcel and the lienholders.

The bill creates s. 718.406(4), F.S., to provide that the primary association must promptly modify or release the record of lien on the primary condominium so that the lien no longer encumbers the secondary condominium. The bill did not reference modification of the lien.

The bill amends s. 719.106(1)(c), F.S., to provide that the requirement of open meeting of the board does not apply to meetings held for the purpose of discussing personnel matters.

The bill amends s. 719.108(1), F.S., F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect all funds that came due up to the time of transfer of title.

The bill does not amend s. 720.306(9), F.S., to provide a post-election certification requirement for newly elected board members for homeowners' associations.

B. Amendments:

None.



696256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 147.

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

718.112, F.S.; revising



294568

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Between lines 147 and 148
insert:

Section 3. Section 702.10, Florida Statutes, is amended to
read:

702.10 Order to show cause; entry of final judgment of
foreclosure; payment during foreclosure.—

(1) A lienholder ~~After a complaint in a foreclosure
proceeding has been filed, the mortgagee~~ may request an order to
show cause for the entry of final judgment in a foreclosure
action. For purposes of this section, the term "lienholder"
includes the plaintiff and a defendant to the action who holds a



294568

14 lien encumbering the property or a defendant who, by virtue of
15 its status as a condominium association, cooperative
16 association, or homeowners' association, may file a lien against
17 the real property subject to foreclosure. Upon filing, and the
18 court shall immediately review the request and the court file in
19 chambers and without a hearing ~~complaint~~. If, upon examination
20 of the court file ~~complaint~~, the court finds that the complaint
21 is verified, complies with s. 702.015, and alleges a cause of
22 action to foreclose on real property, the court shall promptly
23 issue an order directed to the other parties named in the action
24 ~~defendant~~ to show cause why a final judgment of foreclosure
25 should not be entered.

26 (a) The order shall:

27 1. Set the date and time for a hearing on the order to show
28 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner
29 than 20 days after the service of the order. ~~When service is~~
30 ~~obtained by publication, the date for the hearing may not be set~~
31 ~~sooner than 30 days after the first publication.~~ The hearing
32 must be held within 90 ~~60~~ days after the date of service.
33 Failure to hold the hearing within such time does not affect the
34 validity of the order to show cause or the jurisdiction of the
35 court to issue subsequent orders.

36 2. Direct the time within which service of the order to
37 show cause and the complaint must be made upon the defendant.

38 3. State that the filing of defenses by a motion,
39 responsive pleading, affidavits, or other papers ~~or by a~~
40 ~~verified or sworn answer at or before the hearing to show cause~~
41 may constitute ~~constitutes~~ cause for the court not to enter a
42 ~~the attached~~ final judgment.



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43 4. State that a ~~the~~ defendant has the right to file
44 affidavits or other papers ~~before~~ at the time of the hearing to
45 show cause and may appear personally or by way of an attorney at
46 the hearing.

47 5. State that, if a ~~the~~ defendant files defenses by a
48 motion, a verified or sworn answer, affidavits, or other papers
49 or appears personally or by way of an attorney at the time of
50 the hearing, the hearing time shall ~~may~~ be used to hear and
51 consider the defendant's motion, answer, affidavits, other
52 papers, and other evidence and argument as may be presented by
53 the defendant or the defendant's attorney. The court may then
54 determine, based upon clear and convincing evidence and the
55 arguments presented, to support entry of a final judgment of
56 foreclosure, and if so, enter a final judgment of foreclosure
57 ordering the clerk of the court to conduct a foreclosure sale.

58 6. State that, if a ~~the~~ defendant fails to appear at the
59 hearing to show cause or fails to file defenses by a motion or
60 by a verified or sworn answer or files an answer not contesting
61 the foreclosure, such ~~the~~ defendant may be considered to have
62 waived the right to a hearing. ~~and~~ In such case, the court may
63 enter a default against such defendant and, if appropriate, a
64 final judgment of foreclosure ordering the clerk of the court to
65 conduct a foreclosure sale.

66 7. State that if the mortgage provides for reasonable
67 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
68 fees do not exceed 3 percent of the principal amount owed at the
69 time of filing the complaint, it is unnecessary for the court to
70 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
71 to be reasonable.



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72 8. Attach the form of the proposed final judgment of
73 foreclosure which the movant requests the court to will enter,
74 ~~if the defendant waives the right to be heard~~ at the hearing on
75 the order to show cause. The form may contain blanks for the
76 court to enter the amounts due.

77 9. Require the party seeking final judgment mortgagee to
78 serve a copy of the order to show cause on the other parties the
79 ~~mortgager~~ in the following manner:

80 a. If a party the mortgager has been served with the
81 complaint and original process, or the other party is the
82 plaintiff in the action, service of the order to show cause on
83 that party order may be made in the manner provided in the
84 Florida Rules of Civil Procedure.

85 b. If a defendant the mortgager has not been served with
86 the complaint and original process, the order to show cause,
87 together with the summons and a copy of the complaint, shall be
88 served on the party mortgager in the same manner as provided by
89 law for original process.

90
91 A Any final judgment of foreclosure entered under this
92 subsection is for in rem relief only. ~~Nothing in~~ This subsection
93 does not shall preclude the entry of a deficiency judgment where
94 otherwise allowed by law. It is the intent of the Legislature
95 that this alternative procedure may run simultaneously with
96 other court procedures.

97 (b) The right to be heard at the hearing to show cause is
98 waived if a the defendant, after being served as provided by law
99 with an order to show cause, engages in conduct that clearly
100 shows that the defendant has relinquished the right to be heard



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101 on that order. The defendant's failure to file defenses by a
102 motion or by a sworn or verified answer, affidavits, or other
103 papers or to appear personally or by way of an attorney at the
104 hearing duly scheduled on the order to show cause presumptively
105 constitutes conduct that clearly shows that the defendant has
106 relinquished the right to be heard. If a defendant files
107 defenses by a motion, ~~or by~~ a verified or sworn answer,
108 affidavits, or other papers at or before the hearing, such
109 action may constitute ~~constitutes~~ cause and may preclude
110 ~~precludes~~ the entry of a final judgment at the hearing to show
111 cause.

112 (c) In a mortgage foreclosure proceeding, if when a final
113 ~~default~~ judgment of foreclosure has been entered against the
114 mortgagor and the note or mortgage provides for the award of
115 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
116 court to hold a hearing or adjudge the requested attorney
117 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
118 percent of the principal amount owed on the note or mortgage at
119 the time of filing, even if the note or mortgage does not
120 specify the percentage of the original amount that would be paid
121 as liquidated damages.

122 (d) If the court finds that all defendants have ~~the~~
123 ~~defendant has~~ waived the right to be heard as provided in
124 paragraph (b), the court shall promptly enter a final judgment
125 of foreclosure without the need for further hearing if the
126 plaintiff has shown entitlement to a final judgment. If the
127 court finds that a ~~the~~ defendant has not waived the right to be
128 heard on the order to show cause, the court shall ~~then~~ determine
129 whether there is cause not to enter a final judgment of



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130 foreclosure. If the court determines, based upon clear and
131 convincing evidence and the arguments presented, to support
132 entry of a final judgment of foreclosure, the court shall enter
133 a final judgment of foreclosure ordering the clerk of the court
134 to conduct a foreclosure sale ~~finds that the defendant has not~~
135 ~~shown cause, the court shall promptly enter a judgment of~~
136 ~~foreclosure.~~ If the time allotted for the hearing is
137 insufficient, the court may announce at the hearing a date and
138 time for the continued hearing. Only the parties who appear,
139 individually or through an attorney, at the initial hearing must
140 be notified of the date and time of the continued hearing.

141 (2) This subsection does not apply to foreclosure of an
142 owner-occupied residence. As part of any other ~~In an~~ action for
143 foreclosure, and in addition to any other relief that the court
144 may award ~~other than residential real estate, the plaintiff the~~
145 ~~mortgagee~~ may request that the court to enter an order directing
146 the mortgagor defendant to show cause why an order to make
147 payments during the pendency of the foreclosure proceedings or
148 an order to vacate the premises should not be entered.

149 (a) The order shall:

150 1. Set the date and time for hearing on the order to show
151 cause. However, the date for the hearing may ~~shall~~ not be set
152 sooner than 20 days after the service of the order. If ~~Where~~
153 service is obtained by publication, the date for the hearing may
154 ~~shall~~ not be set sooner than 30 days after the first
155 publication.

156 2. Direct the time within which service of the order to
157 show cause and the complaint shall be made upon each ~~the~~
158 defendant.



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159 3. State that a ~~the~~ defendant has the right to file
160 affidavits or other papers at the time of the hearing and may
161 appear personally or by way of an attorney at the hearing.

162 4. State that, if a ~~the~~ defendant fails to appear at the
163 hearing to show cause and fails to file defenses by a motion or
164 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
165 have waived the right to a hearing and in such case the court
166 may enter an order to make payment or vacate the premises.

167 5. Require the movant ~~mortgagee~~ to serve a copy of the
168 order to show cause on the defendant ~~mortgager~~ in the following
169 manner:

170 a. If a defendant ~~the mortgager~~ has been served with the
171 complaint and original process, service of the order may be made
172 in the manner provided in the Florida Rules of Civil Procedure.

173 b. If a defendant ~~the mortgager~~ has not been served with
174 the complaint and original process, the order to show cause,
175 together with the summons and a copy of the complaint, shall be
176 served on the defendant ~~mortgager~~ in the same manner as provided
177 by law for original process.

178 (b) The right of a defendant to be heard at the hearing to
179 show cause is waived if the defendant, after being served as
180 provided by law with an order to show cause, engages in conduct
181 that clearly shows that the defendant has relinquished the right
182 to be heard on that order. A ~~The~~ defendant's failure to file
183 defenses by a motion or by a sworn or verified answer or to
184 appear at the hearing duly scheduled on the order to show cause
185 presumptively constitutes conduct that clearly shows that the
186 defendant has relinquished the right to be heard.

187 (c) If the court finds that a ~~the~~ defendant has waived the



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188 right to be heard as provided in paragraph (b), the court may
189 promptly enter an order requiring payment in the amount provided
190 in paragraph (f) or an order to vacate.

191 (d) If the court finds that the mortgagor has not waived
192 the right to be heard on the order to show cause, the court
193 shall, at the hearing on the order to show cause, consider the
194 affidavits and other showings made by the parties appearing and
195 make a determination of the probable validity of the underlying
196 claim alleged against the mortgagor and the mortgagor's
197 defenses. If the court determines that the plaintiff mortgagee
198 is likely to prevail in the foreclosure action, the court shall
199 enter an order requiring the mortgagor to make the payment
200 described in paragraph (e) to the plaintiff mortgagee and
201 provide for a remedy as described in paragraph (f). However, the
202 order shall be stayed pending final adjudication of the claims
203 of the parties if the mortgagor files with the court a written
204 undertaking executed by a surety approved by the court in an
205 amount equal to the unpaid balance of the lien being foreclosed
206 ~~the mortgage on the property~~, including all principal, interest,
207 unpaid taxes, and insurance premiums paid by the plaintiff the
208 ~~mortgagee~~.

209 (e) ~~If In the event~~ the court enters an order requiring the
210 mortgagor to make payments to the plaintiff mortgagee, payments
211 shall be payable at such intervals and in such amounts provided
212 for in the mortgage instrument before acceleration or maturity.
213 The obligation to make payments pursuant to any order entered
214 under this subsection shall commence from the date of the motion
215 filed under this section hereunder. The order shall be served
216 upon the mortgagor no later than 20 days before the date



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217 specified for the first payment. The order may permit, but may
218 ~~shall~~ not require, the plaintiff mortgagee to take all
219 appropriate steps to secure the premises during the pendency of
220 the foreclosure action.

221 (f) ~~If in the event~~ the court enters an order requiring
222 payments, the order must ~~shall~~ also provide that the plaintiff
223 is mortgagee shall be entitled to possession of the premises
224 upon the failure of the mortgagor to make the payment required
225 in the order unless at the hearing on the order to show cause
226 the court finds good cause to order some other method of
227 enforcement of its order.

228 (g) All amounts paid pursuant to this section shall be
229 credited against the mortgage obligation in accordance with the
230 terms of the loan documents; ~~provided, however, that any~~
231 payments made under this section do ~~shall~~ not constitute a cure
232 of any default or a waiver or any other defense to the mortgage
233 foreclosure action.

234 (h) Upon the filing of an affidavit with the clerk that the
235 premises have not been vacated pursuant to the court order, the
236 clerk shall issue to the sheriff a writ for possession, which is
237 ~~shall be~~ governed by ~~the provisions of~~ s. 83.62.

238 (i) For purposes of this subsection, there is a rebuttable
239 presumption that a residential property for which a homestead
240 exemption for taxation was granted according to the certified
241 rolls of the latest assessment by the county property appraiser,
242 before the filing of the foreclosure action, is an owner-
243 occupied residential property.

244 (3) The Supreme Court is requested to amend the Florida
245 Rules of Civil Procedure to provide for expedited foreclosure



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246 proceedings in conformity with this section and to develop and
247 publish forms for use under this section.

248
249 ===== T I T L E A M E N D M E N T =====

250 And the title is amended as follows:

251 Delete line 9

252 and insert:

253 records request; amending s. 702.10, F.S.; expanding
254 the class of persons authorized to move for expedited
255 foreclosure; defining the term "lienholder"; providing
256 requirements and procedures with respect to an order
257 directed to defendants to show cause why a final
258 judgment of foreclosure should not be entered;
259 providing that certain failures by a defendant to make
260 certain filings or to make certain appearances may
261 have specified legal consequences; requiring the court
262 to enter a final judgment of foreclosure and order a
263 foreclosure sale under certain circumstances; amending
264 a restriction on a mortgagee to request a court to
265 order a mortgagor defendant to make payments or to
266 vacate the premises during an action to foreclose on
267 residential real estate to provide that the
268 restriction applies to all but owner-occupied
269 residential property; providing a presumption
270 regarding owner-occupied residential property;
271 requesting the Supreme Court to adopt rules and forms
272 for use in expedited foreclosure proceedings; amending
273 s. 718.112, F.S.; revising



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 595 - 638

and insert:

Section 6. Paragraphs (a), (b), and (c) of subsection (1) of section 718.116, Florida Statutes, are amended to read:

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

(1) (a) A unit owner, regardless of how the unit owner has acquired his or her title has been acquired, including, but not limited to, by purchase at a foreclosure sale ~~or by deed in lieu of foreclosure~~, is liable for all assessments that ~~which~~ come due while he or she is the unit owner. Additionally, a unit



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14 owner is jointly and severally liable with the previous unit
15 owner for all unpaid assessments, late fees, interest, costs,
16 and reasonable attorney fees incurred by the association in an
17 attempt to collect all such amounts ~~is jointly and severally~~
18 ~~liable with the previous owner for all unpaid assessments~~ that
19 came due up to the time of transfer of title. This liability is
20 without prejudice to any right the present unit owner may have
21 to recover from the previous unit owner the amounts paid by the
22 present unit owner.

23 (b)1. The liability of a first mortgagee or its successors
24 ~~successor~~ or assignees who acquire title to a unit by
25 foreclosure or by deed in lieu of foreclosure for the unpaid
26 assessments, interest, administrative late fees, reasonable
27 costs and attorney fees, and any other fee, cost, or expense
28 incurred in the collection process which ~~that~~ became due before
29 the mortgagee's acquisition of title is limited to the lesser
30 of:

31 a. Only the unit's unpaid common expenses and regular
32 periodic assessments that ~~which~~ accrued or came due during the
33 12 months immediately preceding the acquisition of title and for
34 which payment in full has not been received by the association;
35 or

36 b. One percent of the original mortgage debt.

37 2. Subparagraph 1. applies ~~The provisions of this paragraph~~
38 ~~apply~~ only if the first mortgagee joined the association as a
39 defendant in the foreclosure action. Joinder of the association
40 is not required if, on the date the complaint is filed, the
41 association was dissolved or did not maintain an office or agent
42 for service of process at a location that ~~which~~ was known to or



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43 reasonably discoverable by the mortgagee.

44 3. The first mortgagee or its successors or assignees who
45 acquire title to a unit by foreclosure or by deed in lieu of
46 foreclosure are not liable for any interest, administrative late
47 fee, reasonable cost or attorney fee, or any other fee, cost, or
48 expense that came due before its acquisition of title. This
49 subparagraph is intended to clarify existing law.

50 ~~4.2.~~ An association, or its successor or assignee, that
51 acquires title to a unit through the foreclosure of its lien for
52 assessments is not liable for any unpaid assessments, late fees,
53 interest, or reasonable attorney ~~attorney's~~ fees and costs that
54 came due before the association's acquisition of title in favor
55 of any other association, as defined in s. 718.103(2) or s.
56 720.301(9), which holds a ~~superior~~ lien interest on the unit.
57 This subparagraph is intended to clarify existing law.

58 (c) The person acquiring title shall pay the amount owed to
59 the association within 30 days after transfer of title. Failure
60 to pay the full amount when due entitles ~~shall entitle~~ the
61 association to record a claim of lien against the parcel for the
62 amounts specified in this subsection and proceed in the same
63 manner as provided in this section for the collection of the
64 amount owed and any unpaid assessments coming due after the
65 acquisition of title and other charges authorized by subsection
66 (3) on any unpaid assessments coming due after the acquisition
67 of title.

68
69 Delete lines 1332 - 1416

70 and insert:

71 Section 15. Section 719.108, Florida Statutes, is amended



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72 to read:

73 719.108 Rents and assessments; liability; lien and
74 priority; interest; collection; cooperative ownership.—

75 (1) A unit owner, regardless of how title is acquired,
76 including, without limitation, a purchaser at a judicial sale,
77 ~~is shall be~~ liable for all rents and assessments coming due
78 while the unit owner owns the unit ~~is in exclusive possession of~~
79 ~~a unit. A In a voluntary transfer, the unit owner is also in~~
80 ~~exclusive possession shall be~~ jointly and severally liable with
81 the previous unit owner for all unpaid rents and assessments,
82 late fees, interest, costs, and reasonable attorney fees
83 incurred in an attempt to collect all such amounts that came due
84 against the previous unit owner for his or her share of the
85 common expenses up to the time of the transfer of title. This
86 liability is, without prejudice to the rights of the present
87 unit owner ~~in exclusive possession~~ to recover from the previous
88 unit owner any ~~the~~ amounts paid by the present unit owner ~~in~~
89 ~~exclusive possession therefor.~~

90 (2) The liability for rents and assessments may not be
91 avoided by waiver of the use or enjoyment of any common areas or
92 by abandonment of the unit for which the rents and assessments
93 are made.

94 (3) Notwithstanding any other provision of this section,
95 the liability of a first mortgagee or its successor or assignees
96 who acquire title to a unit by foreclosure or by deed in lieu of
97 foreclosure for the unpaid assessments that became due before
98 the mortgagee's acquisition of title is limited to the lesser
99 of:

100 (a) The unit's unpaid common expenses and regular periodic



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101 or special assessments that accrued or came due during the 12
102 months immediately preceding the acquisition of title and for
103 which payment in full has not been received by the association;
104 or

105 (b) One percent of the original mortgage debt. This
106 paragraph applies only if the first mortgagee joined the
107 association as a defendant in the foreclosure action. Joinder of
108 the association is not required if, on the date the complaint is
109 filed, the association was dissolved or did not maintain an
110 office or agent for service of process at a location that was
111 known to or reasonably discoverable by the mortgagee.

112 (4) The person acquiring title shall pay the amount owed to
113 the association within 30 days after transfer of title. Failure
114 to pay the full amount when due entitles the association to
115 record a claim of lien against the parcel and proceed in the
116 same manner as provided in this section for the collection of
117 unpaid assessments.

118 (5) ~~(3)~~ Rents and assessments, and installments on them, not
119 paid when due bear interest at the rate provided in the
120 cooperative documents from the date due until paid. This rate
121 may not exceed the rate allowed by law and, if a rate is not
122 provided in the cooperative documents, accrues at 18 percent per
123 annum. If the cooperative documents or bylaws so provide, the
124 association may charge an administrative late fee in addition to
125 such interest, not to exceed the greater of \$25 or 5 percent of
126 each installment of the assessment for each delinquent
127 installment that the payment is late. Any payment received by an
128 association must be applied first to any interest accrued by the
129 association, then to any administrative late fee, then to any



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130 costs and reasonable attorney ~~attorney's~~ fees incurred in
131 collection, and then to the delinquent assessment. The foregoing
132 applies notwithstanding any restrictive endorsement,
133 designation, or instruction placed on or accompanying a payment.
134 A late fee is not subject to chapter 687 or s. 719.303(4).

135 (6) ~~(4)~~ The association has a lien on each cooperative
136 parcel for any unpaid rents and assessments, plus interest, and
137 any authorized administrative late fees. If authorized by the
138 cooperative documents, the lien also secures reasonable attorney
139 ~~attorney's~~ fees incurred by the association incident to the
140 collection of the rents and assessments or enforcement of such
141 lien. The lien is effective from and after recording a claim of
142 lien in the public records in the county in which the
143 cooperative parcel is located which states the description of
144 the cooperative parcel, the name of the unit owner, the amount
145 due, and the due dates. The lien expires if a claim of lien is
146 not filed within 1 year after the date the assessment was due,
147 and the lien does not continue for longer than 1 year after the
148 claim of lien has been recorded unless, within that time, an
149 action to enforce the lien is commenced. Except as otherwise
150 provided in this chapter, a lien may not be filed by the
151 association against a cooperative parcel until 30 days after the
152 date on which a notice of intent to file a lien has been
153 delivered to the owner.

154 (a) The notice must be sent to the unit owner at the
155 address of the unit by first-class United States mail and:
156 1. If the most recent address of the unit owner on the
157 records of the association is the address of the unit, the
158 notice must be sent by registered or certified mail, return



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159 receipt requested, to the unit owner at the address of the unit.

160 2. If the most recent address of the unit owner on the
161 records of the association is in the United States, but is not
162 the address of the unit, the notice must be sent by registered
163 or certified mail, return receipt requested, to the unit owner
164 at his or her most recent address.

165 3. If the most recent address of the unit owner on the
166 records of the association is not in the United States, the
167 notice must be sent by first-class United States mail to the
168 unit owner at his or her most recent address.

169 (b) A notice that is sent pursuant to this subsection is
170 deemed delivered upon mailing.

171 (7)~~(5)~~ Liens for rents and assessments may be foreclosed by
172 suit brought in the name of the association, in like manner as a
173 foreclosure of a mortgage on real property. In any foreclosure,
174 the unit owner shall pay a reasonable rental for the cooperative
175 parcel, if so provided in the cooperative documents, and the
176 plaintiff in the foreclosure is entitled to the appointment of a
177 receiver to collect the rent. The association has the power,
178 unless prohibited by the cooperative documents, to bid on the
179 cooperative parcel at the foreclosure sale and to acquire and
180 hold, lease, mortgage, or convey it. Suit to recover a money
181 judgment for unpaid rents and assessments may be maintained
182 without waiving the lien securing them.

183 (8)~~(6)~~ Within 15 days after request by a unit owner or
184 mortgagee, the association shall provide a certificate stating
185 all assessments and other moneys owed to the association by the
186 unit owner with respect to the cooperative parcel. Any person
187 other than the unit owner who relies upon such certificate shall



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188 be protected thereby. Notwithstanding any limitation on transfer
189 fees contained in s. 719.106(1)(i), the association or its
190 authorized agent may charge a reasonable fee for the preparation
191 of the certificate.

192 ~~(9)~~~~(7)~~ The remedies provided in this section do not exclude
193 other remedies provided by the cooperative documents and
194 permitted by law.

195 ~~(10)~~~~(8)~~ (a) A ~~No~~ unit owner may not be excused from the
196 payment of his or her share of the rents or assessments of a
197 cooperative unless all unit owners are likewise proportionately
198 excused from payment, except as provided in subsection (8) ~~(6)~~
199 and in the following cases:

200 1. If the cooperative documents so provide, a developer or
201 other person owning cooperative units offered for sale may be
202 excused from the payment of the share of the common expenses,
203 assessments, and rents related to those units for a stated
204 period of time. The period must terminate no later than the
205 first day of the fourth calendar month following the month in
206 which the right of exclusive possession is first granted to a
207 unit owner. However, the developer must pay the portion of
208 common expenses incurred during that period which exceed the
209 amount assessed against other unit owners.

210 2. A developer, or other person with an ownership interest
211 in cooperative units or having an obligation to pay common
212 expenses, may be excused from the payment of his or her share of
213 the common expenses which would have been assessed against those
214 units during the period of time that he or she shall have
215 guaranteed to each purchaser in the purchase contract or in the
216 cooperative documents, or by agreement between the developer and



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217 a majority of the unit owners other than the developer, that the
218 assessment for common expenses of the cooperative imposed upon
219 the unit owners would not increase over a stated dollar amount
220 and shall have obligated himself or herself to pay any amount of
221 common expenses incurred during that period and not produced by
222 the assessments at the guaranteed level receivable from other
223 unit owners.

224 (b) If the purchase contract, cooperative documents, or
225 agreement between the developer and a majority of unit owners
226 other than the developer provides for the developer or another
227 person to be excused from the payment of assessments pursuant to
228 paragraph (a), ~~no~~ funds receivable from unit owners payable to
229 the association or collected by the developer on behalf of the
230 association, other than regular periodic assessments for common
231 expenses as provided in the cooperative documents and disclosed
232 in the estimated operating budget pursuant to s. 719.503(1)(b)6.
233 or s. 719.504(20)(b), may not be used for payment of common
234 expenses before ~~prior to~~ the expiration of the period during
235 which the developer or other person is so excused. This
236 restriction applies to funds including, but not limited to,
237 capital contributions or startup funds collected from unit
238 purchasers at closing.

239 ~~(11)-(9)~~ The specific purposes of any special assessment,
240 including any contingent special assessment levied in
241 conjunction with the purchase of an insurance policy authorized
242 by s. 719.104(3), approved in accordance with the cooperative
243 documents must ~~shall~~ be set forth in a written notice of such
244 assessment sent or delivered to each unit owner. The funds
245 collected pursuant to a special assessment may ~~shall~~ be used



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246 only for the specific purpose or purposes set forth in such
247 notice or returned to the unit owners. However, upon completion
248 of such ~~specific~~ purposes, any excess funds are ~~shall be~~
249 ~~considered~~ common surplus and may, at the discretion of the
250 board, ~~either~~ be returned to the unit owners or applied as a
251 credit toward future assessments.

252 (12) ~~(10)~~ (a) If the unit is occupied by a tenant and the
253 unit owner is delinquent in paying any monetary obligation due
254 to the association, the association may make a written demand
255 that the tenant pay to the association the subsequent rental
256 payments and continue to make such payments until all monetary
257 obligations of the unit owner related to the unit have been paid
258 in full to the association. The tenant must pay the monetary
259 obligations to the association until the association releases
260 the tenant or the tenant discontinues tenancy in the unit.

261 1. The association must provide the tenant a notice, by
262 hand delivery or United States mail, in substantially the
263 following form:

264
265 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida
266 Statutes, we demand that you make your rent payments
267 directly to the cooperative association and continue
268 doing so until the association notifies you otherwise.

269
270 Payment due the cooperative association may be in the
271 same form as you paid your landlord and must be sent
272 by United States mail or hand delivery to ...(full
273 address)..., payable to ...(name)....

274



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275 Your obligation to pay your rent to the association
276 begins immediately, unless you have already paid rent
277 to your landlord for the current period before
278 receiving this notice. In that case, you must provide
279 the association written proof of your payment within
280 14 days after receiving this notice and your
281 obligation to pay rent to the association begins ~~would~~
282 ~~then begin~~ with the next rental period.

283
284 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida
285 Statutes, your payment of rent to the association
286 gives you complete immunity from any claim for the
287 rent by your landlord.

288
289 2. The association must mail written notice to the unit
290 owner of the association's demand that the tenant make payments
291 to the association.

292 3. The association shall, upon request, provide the tenant
293 with written receipts for payments made.

294 4. A tenant is immune from any claim by the landlord or
295 unit owner related to the rent timely paid to the association
296 after the association has made written demand.

297 (b) If the tenant paid rent to the landlord or unit owner
298 for a given rental period before receiving the demand from the
299 association and provides written evidence to the association of
300 having paid the rent within 14 days after receiving the demand,
301 the tenant shall begin making rental payments to the association
302 for the following rental period and shall continue making rental
303 payments to the association to be credited against the monetary



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304 obligations of the unit owner until the association releases the
305 tenant or the tenant discontinues tenancy in the unit.

306 (c) The liability of the tenant may not exceed the amount
307 due from the tenant to the tenant's landlord. The tenant's
308 landlord shall provide the tenant a credit against rents due to
309 the landlord in the amount of moneys paid to the association.

310 (d) The association may issue notice under s. 83.56 and sue
311 for eviction under ss. 83.59-83.625 as if the association were a
312 landlord under part II of chapter 83 if the tenant fails to pay
313 a required payment to the association after written demand has
314 been made to the tenant. However, the association is not
315 otherwise considered a landlord under chapter 83 and
316 specifically has no obligations under s. 83.51.

317 (e) The tenant does not, by virtue of payment of monetary
318 obligations to the association, have any of the rights of a unit
319 owner to vote in any election or to examine the books and
320 records of the association.

321 (f) A court may supersede the effect of this subsection by
322 appointing a receiver.

323
324 Delete lines 1850 - 1871
325 and insert:

326 Section 20. Paragraphs (b), (c), and (d) of subsection (2)
327 of section 720.3085, Florida Statutes, are amended to read:

328 720.3085 Payment for assessments; lien claims.-

329 (2)

330 (b) Regardless of how the parcel owner has acquired title,
331 including, but not limited to, by purchase at a foreclosure
332 sale, a parcel owner is liable for all assessments that come due



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333 while he or she is the parcel owner. A parcel owner is also
334 jointly and severally liable with the previous parcel owner for
335 all unpaid assessments, late fees, interest, costs, and
336 reasonable attorney fees incurred by the association in an
337 attempt to collect all such amounts that came due up to the time
338 of transfer of title. This liability is without prejudice to any
339 right the present parcel owner may have to recover ~~any amounts~~
340 ~~paid by the present owner~~ from the previous owner the amounts
341 paid by the present owner.

342 (c)1. Notwithstanding anything to the contrary contained in
343 this section, The liability of a first mortgagee, or its
344 successors ~~successor~~ or assignees ~~assignee~~ as a subsequent
345 holder of the first mortgage who acquire ~~acquires~~ title to a
346 parcel by foreclosure or by deed in lieu of foreclosure for the
347 unpaid assessments, interest, administrative late fees,
348 reasonable costs and attorney fees, and any other fee, cost, or
349 expense incurred in the collection process that became due
350 before the mortgagee's acquisition of title is limited to, ~~shall~~
351 be the lesser of:

352 a.1. Only the parcel's unpaid common expenses and regular
353 periodic or special assessments that accrued or came due during
354 the 12 months immediately preceding the acquisition of title and
355 for which payment in full has not been received by the
356 association; or

357 b.2. One percent of the original mortgage debt.

358 2. Subparagraph 1. applies ~~The limitations on first~~
359 ~~mortgagee liability provided by this paragraph~~ apply only if the
360 first mortgagee ~~filed suit against the parcel owner and~~
361 ~~initially~~ joined the association as a defendant in the mortgagee



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362 foreclosure action. Joinder of the association is not required
363 if, on the date the complaint is filed, the association was
364 dissolved or did not maintain an office or agent for service of
365 process at a location that was known to or reasonably
366 discoverable by the mortgagee.

367 3. The first mortgagee or its successors or assignees who
368 acquire title to a parcel by foreclosure or by deed in lieu of
369 foreclosure are not liable for any interest, administrative late
370 fee, reasonable cost or attorney fee, or any other fee, cost, or
371 expense that came due before its acquisition of title. This
372 subparagraph is intended to clarify existing law.

373 4. ~~(d)~~ An association, or its successor or assignee, that
374 acquires title to a parcel through the foreclosure of its lien
375 for assessments is not liable for any unpaid assessments, late
376 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
377 that came due before the association's acquisition of title in
378 favor of any other association, as defined in s. 718.103(2) or
379 s. 720.301(9), which holds a ~~superior~~ lien interest on the
380 parcel. This paragraph is intended to clarify existing law.

381 (d) The person acquiring title shall pay the amount owed to
382 the association within 30 days after transfer of title. Failure
383 to pay the full amount when due entitles the association to
384 record a claim of lien against the parcel for the amounts
385 specified in this subsection and proceed in the same manner as
386 provided in this section for the collection of the amount owed
387 and any unpaid assessments coming due after the acquisition of
388 title and other charges authorized by subsection (3) on any
389 unpaid assessments coming due after the acquisition of title.

390



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

392 And the title is amended as follows:

393 Delete lines 88 - 89

394 and insert:

395 revising liability of unit owners; providing liability
396 limitations of a first mortgagee or its successor or
397 assignees who acquire title to a unit by foreclosure;
398 providing requirements for persons acquiring title;
399 authorizing the association to record a claim of lien
400 under certain conditions; amending s.

401

402 Delete line 119

403 and insert:

404 revising liability of certain parcel owners acquiring
405 title; requiring a person acquiring title to pay
406 certain amounts due within a certain time period;

By the Committee on Regulated Industries; and Senator Bogdanoff

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1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 399.02, F.S.; exempting certain elevators from
 4 specific code update requirements; amending s.
 5 468.433, F.S.; prohibiting the Department of Business
 6 and Professional Regulation from publishing a
 7 community association manager's personal home address
 8 unless it is for the purpose of satisfying a public
 9 records request; amending s. 718.112, F.S.; revising
 10 the terms of membership for board members of a
 11 condominium unit owner association; revising
 12 condominium unit owner meeting notice requirements;
 13 providing that certain election requirements do not
 14 apply to an association governing a timeshare
 15 condominium; revising recordkeeping requirements of a
 16 condominium association board; requiring challenges to
 17 an election to commence within a certain time period;
 18 providing requirements for challenging the failure of
 19 a board to duly notice and hold the required board
 20 meeting or to file the required petition for a recall;
 21 providing requirements for recalled board members to
 22 challenge the recall; providing duties of the Division
 23 of Florida Condominiums, Timeshares, and Mobile Homes
 24 regarding recall petitions; amending s. 718.113, F.S.;
 25 providing requirements for a condominium association
 26 board relating to the installation of hurricane
 27 shutters, impact glass, code-compliant windows or
 28 doors, and other types of code-compliant hurricane
 29 protection under certain circumstances; amending s.

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30 718.115, F.S.; conforming provisions to changes made
 31 by the act; amending s. 718.116, F.S.; revising
 32 liability of certain condominium unit owners acquiring
 33 title; amending s. 718.303, F.S.; revising provisions
 34 relating to imposing remedies against a noncompliant
 35 or delinquent condominium unit owner or member;
 36 revising voting requirements under certain conditions;
 37 amending s. 718.403, F.S.; providing requirements for
 38 the completion of phase condominiums; creating s.
 39 718.406, F.S.; providing definitions; providing
 40 requirements for condominiums created within
 41 condominium parcels; providing for the establishment
 42 of primary condominium and secondary condominium
 43 units; providing requirements for association
 44 declarations; providing requirements for creating a
 45 secondary condominium on a primary condominium parcel;
 46 providing that an owner of a secondary unit is subject
 47 to both the primary condominium declaration and the
 48 secondary condominium declaration; authorizing a
 49 primary condominium association to provide insurance
 50 and adopt hurricane shutter or hurricane protection
 51 specifications under certain conditions; authorizing a
 52 unit owner or holder of a first mortgage on a
 53 secondary unit to register the unit owner's or
 54 mortgagee's interest in the secondary unit with the
 55 primary condominium association by delivery of written
 56 notice; providing other requirements for the written
 57 notice; providing requirements relating to
 58 assessments; providing for resolution of conflicts

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59 between primary condominium declarations and secondary
60 condominium declarations; providing requirements
61 relating to common expenses due the primary
62 condominium association; amending s. 718.5011, F.S.;
63 revising the restriction on officers and full-time
64 employees of the ombudsman from engaging in other
65 businesses or professions; amending s. 718.707, F.S.;
66 revising the time limitation for classification as a
67 bulk assignee or bulk buyer; amending s. 719.104,
68 F.S.; specifying additional records that are not
69 accessible to unit owners; amending s. 719.1055, F.S.;
70 revising provisions relating to the amendment of
71 cooperative documents; providing legislative findings
72 and a finding of compelling state interest; providing
73 criteria for consent or joinder to an amendment;
74 requiring notice regarding proposed amendments to
75 mortgagees; providing criteria for notification;
76 providing for voiding certain amendments; amending s.
77 719.106, F.S.; requiring challenges to an election to
78 commence within a certain time period; specifying
79 certification or educational requirements for a newly
80 elected or appointed cooperative board director;
81 providing requirements for challenging the failure of
82 a board to duly notice and hold the required board
83 meeting or to file the required petition for a recall;
84 providing requirements for recalled board members to
85 challenge the recall; providing duties of the division
86 regarding recall petitions; amending s. 719.108, F.S.;
87 revising provisions governing assessments and liens;

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88 revising liability of unit owners; providing
89 requirements for persons acquiring title; amending s.
90 719.303, F.S.; revising provisions relating to
91 imposing remedies against a noncompliant or delinquent
92 cooperative unit owner or member; revising voting
93 requirements under certain conditions; amending s.
94 720.303, F.S.; revising the types of records that are
95 not accessible to homeowners' association members and
96 parcel owners; providing requirements for challenging
97 the failure of a board to duly notice and hold the
98 required board meeting or to file the required
99 petition for a recall; providing requirements for
100 recalled board members to challenge the recall;
101 providing duties of the division regarding recall
102 petitions; amending s. 720.305, F.S.; revising
103 provisions relating to imposing remedies against a
104 noncompliant or delinquent homeowners' association
105 member and parcel owner; revising voting requirements
106 under certain conditions; amending s. 720.306, F.S.;
107 revising provisions relating to the amendment of
108 homeowners' association declarations; providing
109 legislative findings and a finding of compelling state
110 interest; providing criteria for consent or joinder to
111 an amendment; requiring notice to mortgagees regarding
112 proposed amendments; providing criteria for
113 notification; providing for voiding certain
114 amendments; requiring challenges to an election to
115 commence within a certain time period; specifying
116 certification or educational requirements for a newly

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117 elected or appointed homeowners' association board
 118 director; amending s. 720.3085, F.S.; revising
 119 liability of certain parcel owners acquiring title;
 120 providing an effective date.

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

124 Section 1. Subsection (9) of section 399.02, Florida
 125 Statutes, is amended to read:

126 399.02 General requirements.—

127 (9) Updates to the Safety Code for Existing Elevators and
 128 Escalators, ASME A17.1 and A17.3, which require Phase II
 129 Firefighters' Service on elevators may not be enforced ~~until~~
 130 ~~July 1, 2015, or~~ until the elevator is replaced or requires
 131 major modification, ~~whichever occurs first~~, on elevators in
 132 condominiums or multifamily residential buildings, including
 133 those that are part of a continuing care facility licensed under
 134 chapter 651, or similar retirement community with apartments,
 135 having a certificate of occupancy by the local building
 136 authority that was issued before July 1, 2008. This exception
 137 does not prevent an elevator owner from requesting a variance
 138 from the applicable codes ~~before or after July 1, 2015~~. This
 139 subsection does not prohibit the division from granting
 140 variances pursuant to s. 120.542 and subsection (8). The
 141 division shall adopt rules to administer this subsection.

142 Section 2. Subsection (5) is added to section 468.433,
 143 Florida Statutes, to read:

144 468.433 Licensure by examination.—

145 (5) The department may not publish a licensee's personal

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146 home address unless it is for the purpose of satisfying a public
 147 records request.

148 Section 3. Paragraphs (d) and (j) of subsection (2) of
 149 section 718.112, Florida Statutes, are amended to read:

150 718.112 Bylaws.—

151 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 152 following and, if they do not do so, shall be deemed to include
 153 the following:

154 (d) *Unit owner meetings*.—

155 1. An annual meeting of the unit owners shall be held at
 156 the location provided in the association bylaws and, if the
 157 bylaws are silent as to the location, the meeting shall be held
 158 within 45 miles of the condominium property. However, such
 159 distance requirement does not apply to an association governing
 160 a timeshare condominium.

161 2. Unless the bylaws provide otherwise, a vacancy on the
 162 board caused by the expiration of a director's term shall be
 163 filled by electing a new board member, and the election must be
 164 by secret ballot. An election is not required if the number of
 165 vacancies equals or exceeds the number of candidates. For
 166 purposes of this paragraph, the term "candidate" means an
 167 eligible person who has timely submitted the written notice, as
 168 described in sub-subparagraph 4.a., of his or her intention to
 169 become a candidate. Except in a timeshare condominium, or if the
 170 staggered term of a board member does not expire until a later
 171 annual meeting, or if all members' terms would otherwise expire
 172 but there are no candidates, the terms of all board members
 173 expire at the annual meeting, and such members may stand for
 174 reelection unless prohibited by the bylaws. If the bylaws or the

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175 articles of incorporation permit ~~staggered~~ terms of no more than
 176 2 years ~~and upon approval of a majority of the total voting~~
 177 ~~interests~~, the association board members may serve 2-year
 178 ~~staggered~~ terms. If the number of board members whose terms
 179 expire at the annual meeting equals or exceeds the number of
 180 candidates, the candidates become members of the board effective
 181 upon the adjournment of the annual meeting. Unless the bylaws
 182 provide otherwise, any remaining vacancies shall be filled by
 183 the affirmative vote of the majority of the directors making up
 184 the newly constituted board even if the directors constitute
 185 less than a quorum or there is only one director. In a
 186 condominium association of more than 10 units or in a
 187 condominium association that does not include timeshare units or
 188 timeshare interests, coowners of a unit may not serve as members
 189 of the board of directors at the same time unless they own more
 190 than one unit or unless there are not enough eligible candidates
 191 to fill the vacancies on the board at the time of the vacancy.
 192 Any unit owner desiring to be a candidate for board membership
 193 must comply with sub-subparagraph 4.a. and must be eligible to
 194 serve on the board of directors at the time of the deadline for
 195 submitting a notice of intent to run in order to have his or her
 196 name listed as a proper candidate on the ballot or to serve on
 197 the board. A person who has been suspended or removed by the
 198 division under this chapter, or who is delinquent in the payment
 199 of any fee, fine, or special or regular assessment as provided
 200 in paragraph (n), is not eligible for board membership. A person
 201 who has been convicted of any felony in this state or in a
 202 United States District or Territorial Court, or who has been
 203 convicted of any offense in another jurisdiction which would be

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204 considered a felony if committed in this state, is not eligible
 205 for board membership unless such felon's civil rights have been
 206 restored for at least 5 years as of the date such person seeks
 207 election to the board. The validity of an action by the board is
 208 not affected if it is later determined that a board member is
 209 ineligible for board membership due to having been convicted of
 210 a felony.

211 3. The bylaws must provide the method of calling meetings
 212 of unit owners, including annual meetings. Written notice must
 213 include an agenda, must be mailed, hand delivered, or
 214 electronically transmitted to each unit owner at least 14 days
 215 before the annual meeting, and must be posted in a conspicuous
 216 place on the condominium property at least 14 continuous days
 217 before the annual meeting. Upon notice to the unit owners, the
 218 board shall, by duly adopted rule, designate a specific location
 219 on the condominium property or association property where all
 220 notices of unit owner meetings shall be posted. This requirement
 221 does not apply if there is no condominium property or
 222 association property for posting notices. In lieu of, or in
 223 addition to, the physical posting of meeting notices, the
 224 association may, by reasonable rule, adopt a procedure for
 225 conspicuously posting and repeatedly broadcasting the notice and
 226 the agenda on a closed-circuit cable television system serving
 227 the condominium association. However, if broadcast notice is
 228 used in lieu of a notice posted physically on the condominium
 229 property, the notice and agenda must be broadcast at least four
 230 times every broadcast hour of each day that a posted notice is
 231 otherwise required under this section. If broadcast notice is
 232 provided, the notice and agenda must be broadcast in a manner

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 233 and for a sufficient continuous length of time so as to allow an
 234 average reader to observe the notice and read and comprehend the
 235 entire content of the notice and the agenda. Unless a unit owner
 236 waives in writing the right to receive notice of the annual
 237 meeting, such notice must be hand delivered, mailed, or
 238 electronically transmitted to each unit owner. Notice for
 239 meetings and notice for all other purposes must be mailed to
 240 each unit owner at the address last furnished to the association
 241 by the unit owner, or hand delivered to each unit owner.
 242 However, if a unit is owned by more than one person, the
 243 association must provide notice to the address that the
 244 developer identifies for that purpose and thereafter as one or
 245 more of the owners of the unit advise the association in
 246 writing, or if no address is given or the owners of the unit do
 247 not agree, to the address provided on the deed of record. An
 248 officer of the association, or the manager or other person
 249 providing notice of the association meeting, must provide an
 250 affidavit or United States Postal Service certificate of
 251 mailing, to be included in the official records of the
 252 association affirming that the notice was mailed or hand
 253 delivered in accordance with this provision.

254 4. The members of the board shall be elected by written
 255 ballot or voting machine. Proxies may not be used in electing
 256 the board in general elections or elections to fill vacancies
 257 caused by recall, resignation, or otherwise, unless otherwise
 258 provided in this chapter. This subparagraph does not apply to an
 259 association governing a timeshare condominium.

260 a. At least 60 days before a scheduled election, the
 261 association shall mail, deliver, or electronically transmit, by

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 262 separate association mailing or included in another association
 263 mailing, delivery, or transmission, including regularly
 264 published newsletters, to each unit owner entitled to a vote, a
 265 first notice of the date of the election. Any unit owner or
 266 other eligible person desiring to be a candidate for the board
 267 must give written notice of his or her intent to be a candidate
 268 to the association at least 40 days before a scheduled election.
 269 Together with the written notice and agenda as set forth in
 270 subparagraph 3., the association shall mail, deliver, or
 271 electronically transmit a second notice of the election to all
 272 unit owners entitled to vote, together with a ballot that lists
 273 all candidates. Upon request of a candidate, an information
 274 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 275 furnished by the candidate at least 35 days before the election,
 276 must be included with the mailing, delivery, or transmission of
 277 the ballot, with the costs of mailing, delivery, or electronic
 278 transmission and copying to be borne by the association. The
 279 association is not liable for the contents of the information
 280 sheets prepared by the candidates. In order to reduce costs, the
 281 association may print or duplicate the information sheets on
 282 both sides of the paper. The division shall by rule establish
 283 voting procedures consistent with this sub-subparagraph,
 284 including rules establishing procedures for giving notice by
 285 electronic transmission and rules providing for the secrecy of
 286 ballots. Elections shall be decided by a plurality of ballots
 287 cast. There is no quorum requirement; however, at least 20
 288 percent of the eligible voters must cast a ballot in order to
 289 have a valid election. A unit owner may not permit any other
 290 person to vote his or her ballot, and any ballots improperly

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291 cast are invalid. A unit owner who violates this provision may
 292 be fined by the association in accordance with s. 718.303. A
 293 unit owner who needs assistance in casting the ballot for the
 294 reasons stated in s. 101.051 may obtain such assistance. The
 295 regular election must occur on the date of the annual meeting.
 296 Notwithstanding this sub-subparagraph, an election is not
 297 required unless more candidates file notices of intent to run or
 298 are nominated than board vacancies exist.

299 b. Within 90 days after being elected or appointed to the
 300 board, each newly elected or appointed director shall certify in
 301 writing to the secretary of the association that he or she has
 302 read the association's declaration of condominium, articles of
 303 incorporation, bylaws, and current written policies; that he or
 304 she will work to uphold such documents and policies to the best
 305 of his or her ability; and that he or she will faithfully
 306 discharge his or her fiduciary responsibility to the
 307 association's members. In lieu of this written certification,
 308 within 90 days after being elected or appointed to the board,
 309 the newly elected or appointed director may submit a certificate
 310 of having satisfactorily completed the educational curriculum
 311 administered by a division-approved condominium education
 312 provider within 1 year before or 90 days after the date of
 313 election or appointment. The written certification or
 314 educational certificate is valid and does not have to be
 315 resubmitted as long as the director serves on the board without
 316 interruption. A director who fails to timely file the written
 317 certification or educational certificate is suspended from
 318 service on the board until he or she complies with this sub-
 319 subparagraph. The board may temporarily fill the vacancy during

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320 the period of suspension. The secretary shall cause the
 321 association to retain a director's written certification or
 322 educational certificate for inspection by the members for 5
 323 years after a director's election or the duration of the
 324 director's uninterrupted tenure, whichever is longer. Failure to
 325 have such written certification or educational certificate on
 326 file does not affect the validity of any board action.

327 c. Any challenge to the election process must be commenced
 328 within 60 days after the election results are announced.

329 5. Any approval by unit owners called for by this chapter
 330 or the applicable declaration or bylaws, including, but not
 331 limited to, the approval requirement in s. 718.111(8), must be
 332 made at a duly noticed meeting of unit owners and is subject to
 333 all requirements of this chapter or the applicable condominium
 334 documents relating to unit owner decisionmaking, except that
 335 unit owners may take action by written agreement, without
 336 meetings, on matters for which action by written agreement
 337 without meetings is expressly allowed by the applicable bylaws
 338 or declaration or any law that provides for such action.

339 6. Unit owners may waive notice of specific meetings if
 340 allowed by the applicable bylaws or declaration or any law. If
 341 authorized by the bylaws, notice of meetings of the board of
 342 administration, unit owner meetings, except unit owner meetings
 343 called to recall board members under paragraph (j), and
 344 committee meetings may be given by electronic transmission to
 345 unit owners who consent to receive notice by electronic
 346 transmission.

347 7. Unit owners have the right to participate in meetings of
 348 unit owners with reference to all designated agenda items.

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349 However, the association may adopt reasonable rules governing
 350 the frequency, duration, and manner of unit owner participation.

351 8. A unit owner may tape record or videotape a meeting of
 352 the unit owners subject to reasonable rules adopted by the
 353 division.

354 9. Unless otherwise provided in the bylaws, any vacancy
 355 occurring on the board before the expiration of a term may be
 356 filled by the affirmative vote of the majority of the remaining
 357 directors, even if the remaining directors constitute less than
 358 a quorum, or by the sole remaining director. In the alternative,
 359 a board may hold an election to fill the vacancy, in which case
 360 the election procedures must conform to sub-subparagraph 4.a.
 361 unless the association governs 10 units or fewer and has opted
 362 out of the statutory election process, in which case the bylaws
 363 of the association control. Unless otherwise provided in the
 364 bylaws, a board member appointed or elected under this section
 365 shall fill the vacancy for the unexpired term of the seat being
 366 filled. Filling vacancies created by recall is governed by
 367 paragraph (j) and rules adopted by the division.

368 10. This chapter does not limit the use of general or
 369 limited proxies, require the use of general or limited proxies,
 370 or require the use of a written ballot or voting machine for any
 371 agenda item or election at any meeting of a timeshare
 372 condominium association.

373
 374 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 375 association of 10 or fewer units may, by affirmative vote of a
 376 majority of the total voting interests, provide for different
 377 voting and election procedures in its bylaws, which may be by a

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378 proxy specifically delineating the different voting and election
 379 procedures. The different voting and election procedures may
 380 provide for elections to be conducted by limited or general
 381 proxy.

382 (j) *Recall of board members.*—Subject to ~~the provisions of~~
 383 s. 718.301, any member of the board of administration may be
 384 recalled and removed from office with or without cause by the
 385 vote or agreement in writing by a majority of all the voting
 386 interests. A special meeting of the unit owners to recall a
 387 member or members of the board of administration may be called
 388 by 10 percent of the voting interests giving notice of the
 389 meeting as required for a meeting of unit owners, and the notice
 390 shall state the purpose of the meeting. Electronic transmission
 391 may not be used as a method of giving notice of a meeting called
 392 in whole or in part for this purpose.

393 1. If the recall is approved by a majority of all voting
 394 interests by a vote at a meeting, the recall will be effective
 395 as provided in this paragraph herein. The board shall duly
 396 notice and hold a board meeting within 5 full business days
 397 after ~~of~~ the adjournment of the unit owner meeting to recall one
 398 or more board members. At the meeting, the board shall either
 399 certify the recall, in which case such member or members shall
 400 be recalled effective immediately and shall turn over to the
 401 board within 5 full business days any and all records and
 402 property of the association in their possession, or shall
 403 proceed as set forth in subparagraph 3.

404 2. If the proposed recall is by an agreement in writing by
 405 a majority of all voting interests, the agreement in writing or
 406 a copy thereof shall be served on the association by certified

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407 mail or by personal service in the manner authorized by chapter
 408 48 and the Florida Rules of Civil Procedure. The board of
 409 administration shall duly notice and hold a meeting of the board
 410 within 5 full business days after receipt of the agreement in
 411 writing. At the meeting, the board shall either certify the
 412 written agreement to recall a member or members of the board, in
 413 which case such member or members shall be recalled effective
 414 immediately and shall turn over to the board within 5 full
 415 business days any and all records and property of the
 416 association in their possession, or proceed as described in
 417 subparagraph 3.

418 3. If the board determines not to certify the written
 419 agreement to recall a member or members of the board, or does
 420 not certify the recall by a vote at a meeting, the board shall,
 421 within 5 full business days after the meeting, file with the
 422 division a petition for arbitration pursuant to the procedures
 423 in s. 718.1255. For the purposes of this section, the unit
 424 owners who voted at the meeting or who executed the agreement in
 425 writing shall constitute one party under the petition for
 426 arbitration. If the arbitrator certifies the recall as to any
 427 member or members of the board, the recall will be effective
 428 upon mailing of the final order of arbitration to the
 429 association. If the association fails to comply with the order
 430 of the arbitrator, the division may take action pursuant to s.
 431 718.501. Any member or members so recalled shall deliver to the
 432 board any and all records of the association in their possession
 433 within 5 full business days after ~~of~~ the effective date of the
 434 recall.

435 4. If the board fails to duly notice and hold a board

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436 meeting within 5 full business days after ~~of~~ service of an
 437 agreement in writing or within 5 full business days after ~~of~~ the
 438 adjournment of the unit owner recall meeting, the recall shall
 439 be deemed effective and the board members so recalled shall
 440 immediately turn over to the board any and all records and
 441 property of the association.

442 5. If the board fails to duly notice and hold the required
 443 meeting or fails to file the required petition, the unit owner
 444 representative may file a petition pursuant to s. 718.1255
 445 challenging the board's failure to act. The petition must be
 446 filed within 60 days after the expiration of the applicable 5-
 447 full-business-day period. The review of a petition under this
 448 subparagraph is limited to the sufficiency of service on the
 449 board and the facial validity of the written agreement or
 450 ballots filed.

451 ~~6.5-~~ If a vacancy occurs on the board as a result of a
 452 recall or removal and less than a majority of the board members
 453 are removed, the vacancy may be filled by the affirmative vote
 454 of a majority of the remaining directors, notwithstanding any
 455 provision to the contrary contained in this subsection. If
 456 vacancies occur on the board as a result of a recall and a
 457 majority or more of the board members are removed, the vacancies
 458 shall be filled in accordance with procedural rules to be
 459 adopted by the division, which rules need not be consistent with
 460 this subsection. The rules must provide procedures governing the
 461 conduct of the recall election as well as the operation of the
 462 association during the period after a recall but prior to the
 463 recall election.

464 7. A board member who has been recalled may file a petition

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465 pursuant to s. 718.1255 challenging the validity of a recall.
 466 The petition must be filed within 60 days after the recall is
 467 deemed certified. The association and the unit owner
 468 representative shall be named as the respondents.

469 8. The division may not accept for filing a recall
 470 petition, whether filed pursuant to subparagraph 1.,
 471 subparagraph 2., subparagraph 5., or subparagraph 7. and
 472 regardless of whether the recall was certified, if there are 60
 473 days or less until the scheduled reelection of the board member
 474 sought to be recalled or if 60 days or less have elapsed since
 475 the election of the board member sought to be recalled.

476 Section 4. Subsection (5) of section 718.113, Florida
 477 Statutes, is amended to read:

478 718.113 Maintenance; limitation upon improvement; display
 479 of flag; hurricane shutters and protection; display of religious
 480 decorations.—

481 (5) Each board of administration shall adopt hurricane
 482 shutter specifications for each building within each condominium
 483 operated by the association which shall include color, style,
 484 and other factors deemed relevant by the board. All
 485 specifications adopted by the board must comply with the
 486 applicable building code.

487 (a) The board may, subject to ~~the provisions of s.~~
 488 ~~718.3026,~~ and the approval of a majority of voting interests of
 489 the condominium, install hurricane shutters, impact glass, ~~or~~
 490 ~~other~~ code-compliant windows or doors, or other types of code-
 491 compliant hurricane protection that comply ~~complies~~ with or
 492 ~~exceed~~ ~~exceeds~~ the applicable building code. However, a vote of
 493 the owners is not required if the maintenance, repair, and

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494 replacement of hurricane shutters, impact glass, ~~or other~~ code-
 495 compliant windows or doors, or other types of code-compliant
 496 hurricane protection are the responsibility of the association
 497 pursuant to the declaration of condominium. If hurricane
 498 protection or laminated glass or window film architecturally
 499 designed to function as hurricane protection that which complies
 500 with or exceeds the current applicable building code has been
 501 previously installed, the board may not install hurricane
 502 shutters, ~~hurricane protection, or~~ impact glass, ~~or other~~ code-
 503 compliant windows or doors, or other types of code-compliant
 504 hurricane protection except upon approval by a majority vote of
 505 the voting interests.

506 (b) The association is responsible for the maintenance,
 507 repair, and replacement of the hurricane shutters, impact glass,
 508 code-compliant windows or doors, or other types of code-
 509 compliant hurricane protection authorized by this subsection if
 510 such property ~~hurricane shutters or other hurricane protection~~
 511 is the responsibility of the association pursuant to the
 512 declaration of condominium. If the hurricane shutters, impact
 513 glass, code-compliant windows or doors, or other types of code-
 514 compliant hurricane protection ~~authorized by this subsection~~ are
 515 the responsibility of the unit owners pursuant to the
 516 declaration of condominium, the maintenance, repair, and
 517 replacement of such items are the responsibility of the unit
 518 owner.

519 (c) The board may operate shutters, impact glass, code-
 520 compliant windows or doors, or other types of code-compliant
 521 hurricane protection installed pursuant to this subsection
 522 without permission of the unit owners only if such operation is

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523 necessary to preserve and protect the condominium property and
 524 association property. The installation, replacement, operation,
 525 repair, and maintenance of such shutters, impact glass, code-
 526 compliant windows or doors, or other types of code-compliant
 527 hurricane protection in accordance with the procedures set forth
 528 in this paragraph are not a material alteration to the common
 529 elements or association property within the meaning of this
 530 section.

531 (d) Notwithstanding any other provision in the condominium
 532 documents, if approval is required by the documents, a board may
 533 not refuse to approve the installation or replacement of
 534 hurricane shutters, impact glass, code-compliant windows or
 535 doors, or other types of code-compliant hurricane protection by
 536 a unit owner conforming to the specifications adopted by the
 537 board.

538 Section 5. Paragraph (e) of subsection (1) of section
 539 718.115, Florida Statutes, is amended to read:

540 718.115 Common expenses and common surplus.-

541 (1)

542 (e) The expense of installation, replacement, operation,
 543 repair, and maintenance of hurricane shutters, impact glass,
 544 code-compliant windows or doors, or other types of code-
 545 compliant hurricane protection by the board pursuant to s.
 546 718.113(5) constitutes shall constitute a common expense as
 547 defined herein and shall be collected as provided in this
 548 section if the association is responsible for the maintenance,
 549 repair, and replacement of the hurricane shutters, impact glass,
 550 code-compliant windows or doors, or other types of code-
 551 compliant hurricane protection pursuant to the declaration of

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552 condominium. However, if the maintenance, repair, and
 553 replacement of the hurricane shutters, impact glass, code-
 554 compliant windows or doors, or other types of code-compliant
 555 hurricane protection ~~are~~ is the responsibility of the unit
 556 owners pursuant to the declaration of condominium, the cost of
 557 the installation of the hurricane shutters, impact glass, code-
 558 compliant windows or doors, or other types of code-compliant
 559 hurricane protection ~~is shall~~ is not be a common expense ~~and, but~~
 560 shall be charged individually to the unit owners based on the
 561 cost of installation of the hurricane shutters, impact glass,
 562 code-compliant windows or doors, or other types of code-
 563 compliant hurricane protection appurtenant to the unit.
 564 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless
 565 of whether or not the declaration requires the association or
 566 unit owners to maintain, repair, or replace hurricane shutters,
 567 impact glass, code-compliant windows or doors, or other types of
 568 code-compliant hurricane protection, a unit owner who has
 569 previously installed hurricane shutters in accordance with s.
 570 718.113(5) which comply with the current applicable building
 571 code shall receive a credit when the shutters are installed; a
 572 unit owner who has previously installed impact glass or code-
 573 compliant windows or doors that comply with the current
 574 applicable building code shall receive a credit when the impact
 575 glass or code-compliant windows or doors are installed; and a
 576 unit owner who has installed, other types of code-compliant
 577 hurricane protection that comply with the current applicable
 578 building code shall receive a credit when the same type of other
 579 code-compliant hurricane protection is installed, and the ~~or~~
 580 laminated glass architecturally designed to function as

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581 ~~hurricane protection, which hurricane shutters or other~~
 582 ~~hurricane protection or laminated glass comply with the current~~
 583 ~~applicable building code, shall receive a credit shall be equal~~
 584 to the pro rata portion of the assessed installation cost
 585 assigned to each unit. However, such unit owner remains ~~shall~~
 586 ~~remain~~ responsible for the pro rata share of expenses for
 587 hurricane shutters, impact glass, code-compliant windows or
 588 doors, or other types of code-compliant hurricane protection
 589 installed on common elements and association property by the
 590 board pursuant to s. 718.113(5), and remains ~~shall remain~~
 591 responsible for a pro rata share of the expense of the
 592 replacement, operation, repair, and maintenance of such
 593 shutters, impact glass, code-compliant windows or doors, or
 594 other types of code-compliant hurricane protection.

595 Section 6. Paragraphs (a) and (b) of subsection (1) of
 596 section 718.116, Florida Statutes, are amended to read:

597 718.116 Assessments; liability; lien and priority;
 598 interest; collection.-

599 (1) (a) A unit owner, regardless of how the unit owner has
 600 acquired his or her title has been acquired, including, but not
 601 limited to, by purchase at a foreclosure sale ~~or by deed in lieu~~
 602 ~~of foreclosure~~, is liable for all assessments ~~that which~~ come
 603 due while he or she is the unit owner. Additionally, a unit
 604 owner is jointly and severally liable with the previous owner
 605 for all unpaid assessments, late fees, interest, costs, and
 606 reasonable attorney fees incurred by the association in an
 607 attempt to collect all such amounts is jointly and severally
 608 ~~liable with the previous owner for all unpaid assessments that~~
 609 came due up to the time of transfer of title. This liability is

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610 without prejudice to any right the owner may have to recover
 611 from the previous owner the amounts paid by the owner.

612 (b)1. The liability of a first mortgagee or its successor
 613 or assignees who acquire title to a unit by foreclosure or by
 614 deed in lieu of foreclosure for the unpaid assessments that
 615 became due before the mortgagee's acquisition of title is
 616 limited to the lesser of:

617 a. The unit's unpaid common expenses and regular periodic
 618 assessments which accrued or came due during the 12 months
 619 immediately preceding the acquisition of title and for which
 620 payment in full has not been received by the association; or

621 b. One percent of the original mortgage debt.

622
 623 The limitations on first mortgagee liability provided by
 624 ~~provisions of this subparagraph paragraph~~ apply only if the
 625 first mortgagee joined the association as a defendant in the
 626 foreclosure action. Joinder of the association is not required
 627 if, on the date the complaint is filed, the association was
 628 dissolved or did not maintain an office or agent for service of
 629 process at a location that which was known to or reasonably
 630 discoverable by the mortgagee.

631 2. An association, or its successor or assignee, that
 632 acquires title to a unit through the foreclosure of its lien for
 633 assessments is not liable for any unpaid assessments, late fees,
 634 interest, or reasonable attorney ~~attorney's~~ fees and costs that
 635 came due before the association's acquisition of title in favor
 636 of any other association, as defined in s. 718.103(2) or s.
 637 720.301(9), which holds a ~~superior~~ lien interest on the unit.
 638 This subparagraph is intended to clarify existing law.

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639 Section 7. Paragraph (a) of subsection (3) and subsection
640 (5) of section 718.303, Florida Statutes, are amended to read:

641 718.303 Obligations of owners and occupants; remedies.—

642 (3) The association may levy reasonable fines for the
643 failure of the owner of the unit or its occupant, licensee, or
644 invitee to comply with any provision of the declaration, the
645 association bylaws, or reasonable rules of the association. A
646 fine may not become a lien against a unit. A fine may be levied
647 on the basis of each day of a continuing violation, with a
648 single notice and opportunity for hearing. However, the fine may
649 not exceed \$100 per violation, or \$1,000 in the aggregate.

650 (a) An association may suspend, for a reasonable period of
651 time, the right of a unit owner, or a unit owner's tenant,
652 guest, or invitee, to use the common elements, common
653 facilities, or any other association property for failure to
654 comply with any provision of the declaration, the association
655 bylaws, or reasonable rules of the association. This paragraph
656 does not apply to limited common elements intended to be used
657 only by that unit, common elements needed to access the unit,
658 utility services provided to the unit, parking spaces, or
659 elevators.

660 (5) An association may suspend the voting rights of a unit
661 or member due to nonpayment of any monetary obligation due to
662 the association which is more than 90 days delinquent.
663 Notwithstanding an association's declaration, articles of
664 incorporation, or bylaws, the requirements to establish a
665 quorum, conduct an election, or obtain membership approval on
666 actions under this chapter or pursuant to the declaration,
667 articles of incorporation, or bylaws shall be reduced by the

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668 number of suspended voting interests or consent rights. A voting
669 interest or consent right allocated to a unit or member which
670 has been suspended by the association may not be counted towards
671 the total number of voting interests necessary to constitute a
672 quorum, the number of voting interests required to conduct an
673 election, or the number of voting interests required to approve
674 an action under this chapter or pursuant to the declaration,
675 articles of incorporation, or bylaws. The suspension ends upon
676 full payment of all obligations currently due or overdue the
677 association. The notice and hearing requirements under
678 subsection (3) do not apply to a suspension imposed under this
679 subsection.

680 Section 8. Subsection (1) of section 718.403, Florida
681 Statutes, is amended to read:

682 718.403 Phase condominiums.—

683 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a
684 developer may develop a condominium in phases, if the original
685 declaration of condominium submitting the initial phase to
686 condominium ownership or an amendment to the declaration which
687 has been approved by all of the unit owners and unit mortgagees
688 provides for and describes in detail all anticipated phases; the
689 impact, if any, which the completion of subsequent phases would
690 have upon the initial phase; and the time period (which may not
691 exceed 7 years from the date of recording the declaration of
692 condominium, unless extended as provided in this subsection)
693 within which all phases must be added to the condominium and
694 comply with the requirements of this section and at the end of
695 which the right to add additional phases expires.

696 (a) All phases must be added to the condominium within 7

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697 years after the date of recording the original declaration of
 698 condominium submitting the initial phase to condominium
 699 ownership unless an amendment extending the 7-year period is
 700 approved by the unit owners.

701 (b) An amendment to extend the 7-year period requires the
 702 approval of the owners necessary to amend the declaration of
 703 condominium consistent with s. 718.110(1) (a). An extension of
 704 the 7-year period may be submitted for approval only during the
 705 last 3 years of the 7-year period.

706 (c) An amendment must describe the time period within which
 707 all phases must be added to the condominium and such time period
 708 may not exceed 10 years after the date of recording the original
 709 declaration of condominium submitting the initial phase to
 710 condominium ownership.

711 (d) Notwithstanding s. 718.110, an amendment extending the
 712 7-year period is not an amendment subject to s. 718.110(4).

713 Section 9. Section 718.406, Florida Statutes, is created to
 714 read:

715 718.406 Condominiums created within condominium parcels.-

716 (1) Unless otherwise expressed in the declaration of
 717 condominium, if a condominium is created within a condominium
 718 parcel, the term:

719 (a) "Primary condominium" means any condominium that is not
 720 a secondary condominium and contains one or more subdivided
 721 parcels.

722 (b) "Primary condominium association" means any entity that
 723 operates a primary condominium.

724 (c) "Primary condominium declaration" means the instrument
 725 or instruments by which a primary condominium is created, as

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726 they are from time to time amended.

727 (d) "Secondary condominium" means one or more condominium
 728 parcels that have been submitted to condominium ownership
 729 pursuant to a secondary condominium declaration.

730 (e) "Secondary condominium association" means any entity
 731 responsible for the operation of a secondary condominium.

732 (f) "Secondary condominium declaration" means the
 733 instrument or instruments by which a secondary condominium is
 734 created, as they are from time to time amended.

735 (g) "Secondary unit" means a unit that is part of a
 736 secondary condominium.

737 (h) "Subdivided parcel" means a condominium parcel in a
 738 primary condominium that has been submitted to condominium
 739 ownership pursuant to a secondary condominium declaration.

740 (2) Unless otherwise provided in the primary condominium
 741 declaration, if a condominium parcel is a subdivided parcel, the
 742 secondary condominium association responsible for operating the
 743 secondary condominium upon the subdivided parcel shall act on
 744 behalf of all of the unit owners of secondary units in the
 745 secondary condominium and shall exercise all rights of the
 746 secondary unit owners in the primary condominium association,
 747 other than the right of possession of the secondary unit. The
 748 secondary condominium association shall designate a
 749 representative who shall cast the vote of the subdivided parcel
 750 in the primary condominium association and, if no person is
 751 designated by the secondary condominium association to cast such
 752 vote, the vote shall be cast by the president of the secondary
 753 condominium association or the designee of the president.

754 (3) Unless otherwise provided in the primary condominium

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755 declaration as originally recorded, no secondary condominium may
 756 be created upon any condominium parcel in the primary
 757 condominium, and no amendment to the primary condominium
 758 declaration may permit secondary condominiums to be created upon
 759 parcels in the primary condominium, unless the record owners of
 760 a majority of the condominium parcels join in the execution of
 761 the amendment.

762 (4) If the primary condominium declaration permits the
 763 creation of a secondary condominium and a condominium parcel in
 764 the primary condominium is being submitted for condominium
 765 ownership to create a secondary condominium upon the primary
 766 condominium parcel, the approval of the board of administration
 767 of the primary condominium association is required in order to
 768 create the secondary condominium on the primary condominium
 769 parcel. Unless otherwise provided in the primary condominium
 770 declaration, the owners of condominium parcels in the primary
 771 condominium that will not be part of the proposed secondary
 772 condominium and the holders of liens upon such primary
 773 condominium parcels shall not have approval rights regarding the
 774 creation of the secondary condominium or the contents of the
 775 secondary condominium declaration being submitted. Only the
 776 primary condominium association, the owner of the subdivided
 777 parcel, and the holders of liens upon the subdivided parcel
 778 shall have approval rights regarding the creation of the
 779 secondary condominium and the contents of the secondary
 780 condominium declaration. In order for the recording of the
 781 secondary condominium declaration to be effective to create the
 782 secondary condominium, the board of administration of the
 783 primary condominium association, the owner of the subdivided

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784 parcel, and all holders of liens on the subdivided parcel must
 785 execute the secondary condominium declaration for the purpose of
 786 evidencing their approval.

787 (5) An owner of a secondary unit is subject to both the
 788 primary condominium declaration and the secondary condominium
 789 declaration.

790 (6) The primary condominium association may provide
 791 insurance required by s. 718.111(11) for common elements and
 792 other improvements within the secondary condominium if the
 793 primary condominium declaration permits the primary condominium
 794 association to provide such insurance for the benefit of the
 795 condominium property included in the subdivided parcel, in lieu
 796 of such insurance being provided by the secondary condominium
 797 association.

798 (7) Unless otherwise provided in the primary condominium
 799 declaration, the board of administration of the primary
 800 condominium association may adopt hurricane shutter or hurricane
 801 protection specifications for each building within which
 802 subdivided parcels are located and govern any subdivided parcels
 803 in the primary condominium.

804 (8) Any unit owner of, or holder of a first mortgage on, a
 805 secondary unit may register such unit owner's or mortgagee's
 806 interest in the secondary unit with the primary condominium
 807 association by delivering written notice to the primary
 808 condominium association. Once registered, the primary
 809 condominium association must provide written notice to such
 810 secondary unit owner and his, her, or its first mortgagee at
 811 least 30 days before instituting any foreclosure action against
 812 the subdivided parcel in which the secondary unit owner and his,

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813 her, or its first mortgagee hold an interest for failure of the
 814 subdivided parcel owner to pay any assessments or other amounts
 815 due to the primary condominium association. A foreclosure action
 816 against a subdivided parcel is not effective without an
 817 affidavit indicating that written notice of the foreclosure was
 818 timely sent to the names and addresses of secondary unit owners
 819 and first mortgagees registered with the primary condominium
 820 association pursuant to this subsection. The registered
 821 secondary unit owner or mortgagee has a right to pay the
 822 proportionate amount of the delinquent assessment attributable
 823 to the secondary unit in which the registered unit owner or
 824 mortgagee holds an interest. Upon such payment, the primary
 825 condominium association shall be obligated to promptly modify or
 826 partially release the record of lien on the primary condominium
 827 association so that the lien no longer encumbers such secondary
 828 unit. Alternatively, a registered secondary unit owner or
 829 mortgagee may pay the amount of all delinquent assessments
 830 attributed to the subdivided parcel and seek reimbursement for
 831 all such amounts paid and all costs incurred from the secondary
 832 condominium association, including, without limitation, the
 833 costs of collection other than the share allocable to the
 834 secondary unit on behalf of which such payment was made.

835 (9) In the event of a conflict between the primary
 836 condominium declaration and the secondary condominium
 837 declaration, the primary condominium declaration controls.

838 (10) All common expenses due to the primary condominium
 839 association with respect to a subdivided parcel are a common
 840 expense of the secondary condominium association and shall be
 841 collected by the secondary condominium association from its

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842 members and paid to the primary condominium association.

843 Section 10. Subsection (2) of section 718.5011, Florida
 844 Statutes, is amended to read:

845 718.5011 Ombudsman; appointment; administration.—

846 (2) The Governor shall appoint the ombudsman. The ombudsman
 847 must be an attorney admitted to practice before the Florida
 848 Supreme Court and shall serve at the pleasure of the Governor. A
 849 vacancy in the office shall be filled in the same manner as the
 850 original appointment. An officer or full-time employee of the
 851 ombudsman's office may not actively engage in any other business
 852 or profession that directly or indirectly relates to or
 853 conflicts with his or her work in the ombudsman's office; serve
 854 as the representative of any political party, executive
 855 committee, or other governing body of a political party; serve
 856 as an executive, officer, or employee of a political party;
 857 receive remuneration for activities on behalf of any candidate
 858 for public office; or engage in soliciting votes or other
 859 activities on behalf of a candidate for public office. The
 860 ombudsman or any employee of his or her office may not become a
 861 candidate for election to public office unless he or she first
 862 resigns from his or her office or employment.

863 Section 11. Section 718.707, Florida Statutes, is amended
 864 to read:

865 718.707 Time limitation for classification as bulk assignee
 866 or bulk buyer.—A person acquiring condominium parcels may not be
 867 classified as a bulk assignee or bulk buyer unless the
 868 condominium parcels were acquired on or after July 1, 2010, but
 869 before July 1, 2015 ~~2012~~. The date of such acquisition shall be
 870 determined by the date of recording a deed or other instrument

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871 of conveyance for such parcels in the public records of the
872 county in which the condominium is located, or by the date of
873 issuing a certificate of title in a foreclosure proceeding with
874 respect to such condominium parcels.

875 Section 12. Paragraph (c) of subsection (2) of section
876 719.104, Florida Statutes, is amended to read:

877 719.104 Cooperatives; access to units; records; financial
878 reports; assessments; purchase of leases.—

879 (2) OFFICIAL RECORDS.—

880 (c) The official records of the association shall be open
881 to inspection by any association member or the authorized
882 representative of such member at all reasonable times. Failure
883 to permit inspection of the association records as provided in
884 this subsection ~~herein~~ entitles any person prevailing in an
885 enforcement action to recover reasonable attorney attorney's
886 fees from the person in control of the records who, directly or
887 indirectly, knowingly denies access to the records for
888 inspection. The right to inspect the records includes the right
889 to make or obtain copies, at the reasonable expense, if any, of
890 the association member. The association may adopt reasonable
891 rules regarding the frequency, time, location, notice, and
892 manner of record inspections and copying. The failure of an
893 association to provide the records within 10 working days after
894 receipt of a written request creates a rebuttable presumption
895 that the association willfully failed to comply with this
896 paragraph. A unit owner who is denied access to official records
897 is entitled to the actual damages or minimum damages for the
898 association's willful failure to comply with this paragraph. The
899 minimum damages shall be \$50 per calendar day up to 10 days, the

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900 calculation to begin on the 11th day after receipt of the
901 written request. The association shall maintain an adequate
902 number of copies of the declaration, articles of incorporation,
903 bylaws, and rules, and all amendments to each of the foregoing,
904 as well as the question and answer sheet provided for in s.
905 719.504, on the cooperative property to ensure their
906 availability to unit owners and prospective purchasers, and may
907 charge its actual costs for preparing and furnishing these
908 documents to those requesting the same. Notwithstanding ~~the~~
909 ~~provisions of this paragraph~~, the following records shall not be
910 accessible to unit owners:

911 1. Any record protected by the lawyer-client privilege as
912 provided in s. 90.502; protected by the work-product privilege,
913 including any record ~~A record that was~~ prepared by an
914 association attorney or prepared at the attorney's express
915 direction; reflecting that reflects a mental impression,
916 conclusion, litigation strategy, or legal theory of the attorney
917 or the association; or ~~that was~~ prepared exclusively for civil
918 or criminal litigation or for adversarial administrative
919 proceedings or in anticipation of imminent civil or criminal
920 litigation or imminent adversarial administrative proceedings,
921 until the conclusion of the litigation or adversarial
922 administrative proceedings.

923 2. Information obtained by an association in connection
924 with the approval of the lease, sale, or other transfer of a
925 unit.

926 3. Medical records of unit owners.

927 4. Personnel records of association employees, including,
928 but not limited to, disciplinary, payroll, health, and insurance

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929 records. For purposes of this subparagraph, the term "personnel
 930 records" does not include written employment agreements with an
 931 association employee or budgetary or financial records that
 932 indicate the compensation paid to an association employee.

933 5. Social security numbers, driver license numbers, credit
 934 card numbers, e-mail addresses, telephone numbers, emergency
 935 contact information, any addresses of a unit owner other than
 936 addresses provided to fulfill the association's notice
 937 requirements, and other personal identifying information of any
 938 person, excluding the person's name, unit designation, mailing
 939 address, and property address.

940 6. Any electronic security measures that are used by the
 941 association to safeguard data, including passwords.

942 7. The software and operating system used by the
 943 association which allows manipulation of data, even if the owner
 944 owns a copy of the same software used by the association. The
 945 data is part of the official records of the association.

946 Section 13. Subsection (7) is added to section 719.1055,
 947 Florida Statutes, to read:

948 719.1055 Amendment of cooperative documents; alteration and
 949 acquisition of property.—

950 (7) The Legislature finds that the procurement of mortgagee
 951 consent to amendments that do not affect the rights or interests
 952 of mortgagees is an unreasonable and substantial logistical and
 953 financial burden on the unit owners and that there is a
 954 compelling state interest in enabling the members of an
 955 association to approve amendments to the association's
 956 cooperative documents through legal means. Accordingly, and
 957 notwithstanding any provision to the contrary contained in this

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958 subsection:

959 (a) As to any mortgage recorded on or after July 1, 2012,
 960 any provision in the association's cooperative documents that
 961 requires the consent or joinder of some or all mortgagees of
 962 units or any other portion of the association's common areas to
 963 amend the association's cooperative documents or for any other
 964 matter is enforceable only as to amendments to the association's
 965 cooperative documents that adversely affect the priority of the
 966 mortgagee's lien or the mortgagee's rights to foreclose its lien
 967 or that otherwise materially affect the rights and interests of
 968 the mortgagees.

969 (b) As to mortgages recorded before July 1, 2012, any
 970 existing provisions in the association's cooperative documents
 971 requiring mortgagee consent are enforceable.

972 (c) In securing consent or joinder, the association is
 973 entitled to rely upon the public records to identify the holders
 974 of outstanding mortgages. The association may use the address
 975 provided in the original recorded mortgage document, unless
 976 there is a different address for the holder of the mortgage in a
 977 recorded assignment or modification of the mortgage, which
 978 recorded assignment or modification must reference the official
 979 records book and page on which the original mortgage was
 980 recorded. Once the association has identified the recorded
 981 mortgages of record, the association shall, in writing, request
 982 of each unit owner whose unit is encumbered by a mortgage of
 983 record any information the owner has in his or her possession
 984 regarding the name and address of the person to whom mortgage
 985 payments are currently being made. Notice shall be sent to such
 986 person if the address provided in the original recorded mortgage

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987 document is different from the name and address of the mortgagee
 988 or assignee of the mortgage as shown by the public record. The
 989 association is deemed to have complied with this requirement by
 990 making the written request of the unit owners required under
 991 this paragraph. Any notices required to be sent to the
 992 mortgagees under this paragraph shall be sent to all available
 993 addresses provided to the association.

994 (d) Any notice to the mortgagees required under paragraph
 995 (c) may be sent by a method that establishes proof of delivery,
 996 and any mortgagee who fails to respond within 60 days after the
 997 date of mailing is deemed to have consented to the amendment.

998 (e) For those amendments requiring mortgagee consent on or
 999 after July 1, 2012, in the event mortgagee consent is provided
 1000 other than by properly recorded joinder, such consent shall be
 1001 evidenced by affidavit of the association recorded in the public
 1002 records of the county in which the declaration is recorded.

1003 (f) Any amendment adopted without the required consent of a
 1004 mortgagee is voidable only by a mortgagee who was entitled to
 1005 notice and an opportunity to consent. An action to void an
 1006 amendment is subject to the statute of limitations beginning 5
 1007 years after the date of discovery as to the amendments described
 1008 in paragraph (a) and 5 years after the date of recordation of
 1009 the certificate of amendment for all other amendments. This
 1010 paragraph applies to all mortgages, regardless of the date of
 1011 recordation of the mortgage.

1012 Section 14. Paragraphs (c), (d), and (f) of subsection (1)
 1013 of section 719.106, Florida Statutes, are amended to read:

1014 719.106 Bylaws; cooperative ownership.—

1015 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative

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1016 documents shall provide for the following, and if they do not,
 1017 they shall be deemed to include the following:

1018 (c) *Board of administration meetings.*—Meetings of the board
 1019 of administration at which a quorum of the members is present
 1020 shall be open to all unit owners. Any unit owner may tape record
 1021 or videotape meetings of the board of administration. The right
 1022 to attend such meetings includes the right to speak at such
 1023 meetings with reference to all designated agenda items. The
 1024 division shall adopt reasonable rules governing the tape
 1025 recording and videotaping of the meeting. The association may
 1026 adopt reasonable written rules governing the frequency,
 1027 duration, and manner of unit owner statements. Adequate notice
 1028 of all meetings shall be posted in a conspicuous place upon the
 1029 cooperative property at least 48 continuous hours preceding the
 1030 meeting, except in an emergency. Any item not included on the
 1031 notice may be taken up on an emergency basis by at least a
 1032 majority plus one of the members of the board. Such emergency
 1033 action shall be noticed and ratified at the next regular meeting
 1034 of the board. However, written notice of any meeting at which
 1035 nonemergency special assessments, or at which amendment to rules
 1036 regarding unit use, will be considered shall be mailed,
 1037 delivered, or electronically transmitted to the unit owners and
 1038 posted conspicuously on the cooperative property not less than
 1039 14 days prior to the meeting. Evidence of compliance with this
 1040 14-day notice shall be made by an affidavit executed by the
 1041 person providing the notice and filed among the official records
 1042 of the association. Upon notice to the unit owners, the board
 1043 shall by duly adopted rule designate a specific location on the
 1044 cooperative property upon which all notices of board meetings

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1045 shall be posted. In lieu of or in addition to the physical
 1046 posting of notice of any meeting of the board of administration
 1047 on the cooperative property, the association may, by reasonable
 1048 rule, adopt a procedure for conspicuously posting and repeatedly
 1049 broadcasting the notice and the agenda on a closed-circuit cable
 1050 television system serving the cooperative association. However,
 1051 if broadcast notice is used in lieu of a notice posted
 1052 physically on the cooperative property, the notice and agenda
 1053 must be broadcast at least four times every broadcast hour of
 1054 each day that a posted notice is otherwise required under this
 1055 section. When broadcast notice is provided, the notice and
 1056 agenda must be broadcast in a manner and for a sufficient
 1057 continuous length of time so as to allow an average reader to
 1058 observe the notice and read and comprehend the entire content of
 1059 the notice and the agenda. Notice of any meeting in which
 1060 regular assessments against unit owners are to be considered for
 1061 any reason shall specifically contain a statement that
 1062 assessments will be considered and the nature of any such
 1063 assessments. Meetings of a committee to take final action on
 1064 behalf of the board or to make recommendations to the board
 1065 regarding the association budget are subject to the provisions
 1066 of this paragraph. Meetings of a committee that does not take
 1067 final action on behalf of the board or make recommendations to
 1068 the board regarding the association budget are subject to the
 1069 provisions of this section, unless those meetings are exempted
 1070 from this section by the bylaws of the association.
 1071 Notwithstanding any other law to the contrary, the requirement
 1072 that board meetings and committee meetings be open to the unit
 1073 owners ~~does not apply is inapplicable~~ to board or committee

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1074 meetings held for the purpose of discussing personnel matters or
 1075 meetings between the board or a committee and the association's
 1076 attorney, with respect to proposed or pending litigation, if
 1077 ~~when~~ the meeting is held for the purpose of seeking or rendering
 1078 legal advice.

1079 (d) *Shareholder meetings.*—There shall be an annual meeting
 1080 of the shareholders. All members of the board of administration
 1081 shall be elected at the annual meeting unless the bylaws provide
 1082 for staggered election terms or for their election at another
 1083 meeting. Any unit owner desiring to be a candidate for board
 1084 membership must comply with subparagraph 1. The bylaws must
 1085 provide the method for calling meetings, including annual
 1086 meetings. Written notice, which must incorporate an
 1087 identification of agenda items, shall be given to each unit
 1088 owner at least 14 days before the annual meeting and posted in a
 1089 conspicuous place on the cooperative property at least 14
 1090 continuous days preceding the annual meeting. Upon notice to the
 1091 unit owners, the board must by duly adopted rule designate a
 1092 specific location on the cooperative property upon which all
 1093 notice of unit owner meetings are posted. In lieu of or in
 1094 addition to the physical posting of the meeting notice, the
 1095 association may, by reasonable rule, adopt a procedure for
 1096 conspicuously posting and repeatedly broadcasting the notice and
 1097 the agenda on a closed-circuit cable television system serving
 1098 the cooperative association. However, if broadcast notice is
 1099 used in lieu of a posted notice, the notice and agenda must be
 1100 broadcast at least four times every broadcast hour of each day
 1101 that a posted notice is otherwise required under this section.
 1102 If broadcast notice is provided, the notice and agenda must be

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1103 broadcast in a manner and for a sufficient continuous length of
 1104 time to allow an average reader to observe the notice and read
 1105 and comprehend the entire content of the notice and the agenda.
 1106 Unless a unit owner waives in writing the right to receive
 1107 notice of the annual meeting, the notice of the annual meeting
 1108 must be sent by mail, hand delivered, or electronically
 1109 transmitted to each unit owner. An officer of the association
 1110 must provide an affidavit or United States Postal Service
 1111 certificate of mailing, to be included in the official records
 1112 of the association, affirming that notices of the association
 1113 meeting were mailed, hand delivered, or electronically
 1114 transmitted, in accordance with this provision, to each unit
 1115 owner at the address last furnished to the association.

1116 1. The board of administration shall be elected by written
 1117 ballot or voting machine. A proxy may not be used in electing
 1118 the board of administration in general elections or elections to
 1119 fill vacancies caused by recall, resignation, or otherwise
 1120 unless otherwise provided in this chapter.

1121 a. At least 60 days before a scheduled election, the
 1122 association shall mail, deliver, or transmit, whether by
 1123 separate association mailing, delivery, or electronic
 1124 transmission or included in another association mailing,
 1125 delivery, or electronic transmission, including regularly
 1126 published newsletters, to each unit owner entitled to vote, a
 1127 first notice of the date of the election. Any unit owner or
 1128 other eligible person desiring to be a candidate for the board
 1129 of administration must give written notice to the association at
 1130 least 40 days before a scheduled election. Together with the
 1131 written notice and agenda as set forth in this section, the

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1132 association shall mail, deliver, or electronically transmit a
 1133 second notice of election to all unit owners entitled to vote,
 1134 together with a ballot ~~that which~~ lists all candidates. Upon
 1135 request of a candidate, the association shall include an
 1136 information sheet, no larger than 8 1/2 inches by 11 inches,
 1137 which must be furnished by the candidate at least 35 days before
 1138 the election, to be included with the mailing, delivery, or
 1139 electronic transmission of the ballot, with the costs of
 1140 mailing, delivery, or transmission and copying to be borne by
 1141 the association. The association is not liable for the contents
 1142 of the information sheets provided by the candidates. In order
 1143 to reduce costs, the association may print or duplicate the
 1144 information sheets on both sides of the paper. The division
 1145 shall by rule establish voting procedures consistent with this
 1146 subparagraph, including rules establishing procedures for giving
 1147 notice by electronic transmission and rules providing for the
 1148 secrecy of ballots. Elections shall be decided by a plurality of
 1149 those ballots cast. There is no quorum requirement. However, at
 1150 least 20 percent of the eligible voters must cast a ballot in
 1151 order to have a valid election. A unit owner may not permit any
 1152 other person to vote his or her ballot, and any such ballots
 1153 improperly cast are invalid. A unit owner who needs assistance
 1154 in casting the ballot for the reasons stated in s. 101.051 may
 1155 obtain assistance in casting the ballot. Any unit owner
 1156 violating this provision may be fined by the association in
 1157 accordance with s. 719.303. The regular election must occur on
 1158 the date of the annual meeting. This subparagraph does not apply
 1159 to timeshare cooperatives. Notwithstanding this subparagraph, an
 1160 election and balloting are not required unless more candidates

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1161 file a notice of intent to run or are nominated than vacancies
 1162 exist on the board. Any challenge to the election process must
 1163 be commenced within 60 days after the election results are
 1164 announced.

1165 b. Within 90 days after being elected or appointed to the
 1166 board, each new director shall certify in writing to the
 1167 secretary of the association that he or she has read the
 1168 association's bylaws, articles of incorporation, proprietary
 1169 lease, and current written policies; that he or she will work to
 1170 uphold such documents and policies to the best of his or her
 1171 ability; and that he or she will faithfully discharge his or her
 1172 fiduciary responsibility to the association's members. Within 90
 1173 days after being elected or appointed to the board, in lieu of
 1174 this written certification, the newly elected or appointed
 1175 director may submit a certificate of having satisfactorily
 1176 completed the educational curriculum administered by an
 1177 education provider as approved by the division pursuant to the
 1178 requirements established in chapter 718 within 1 year before or
 1179 90 days after the date of election or appointment. The
 1180 educational certificate is valid and does not have to be
 1181 resubmitted as long as the director serves on the board without
 1182 interruption. A director who fails to timely file the written
 1183 certification or educational certificate is suspended from
 1184 service on the board until he or she complies with this sub-
 1185 paragraph. The board may temporarily fill the vacancy during
 1186 the period of suspension. The secretary shall cause the
 1187 association to retain a director's written certification or
 1188 educational certificate for inspection by the members for 5
 1189 years after a director's election or the duration of the

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1190 director's uninterrupted tenure, whichever is longer. Failure to
 1191 have such written certification or educational certificate on
 1192 file does not affect the validity of any board action.

1193 2. Any approval by unit owners called for by this chapter,
 1194 or the applicable cooperative documents, must be made at a duly
 1195 noticed meeting of unit owners and is subject to this chapter or
 1196 the applicable cooperative documents relating to unit owner
 1197 decisionmaking, except that unit owners may take action by
 1198 written agreement, without meetings, on matters for which action
 1199 by written agreement without meetings is expressly allowed by
 1200 the applicable cooperative documents or law which provides for
 1201 the unit owner action.

1202 3. Unit owners may waive notice of specific meetings if
 1203 allowed by the applicable cooperative documents or law. If
 1204 authorized by the bylaws, notice of meetings of the board of
 1205 administration, shareholder meetings, except shareholder
 1206 meetings called to recall board members under paragraph (f), and
 1207 committee meetings may be given by electronic transmission to
 1208 unit owners who consent to receive notice by electronic
 1209 transmission.

1210 4. Unit owners have the right to participate in meetings of
 1211 unit owners with reference to all designated agenda items.
 1212 However, the association may adopt reasonable rules governing
 1213 the frequency, duration, and manner of unit owner participation.

1214 5. Any unit owner may tape record or videotape meetings of
 1215 the unit owners subject to reasonable rules adopted by the
 1216 division.

1217 6. Unless otherwise provided in the bylaws, a vacancy
 1218 occurring on the board before the expiration of a term may be

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1219 filled by the affirmative vote of the majority of the remaining
 1220 directors, even if the remaining directors constitute less than
 1221 a quorum, or by the sole remaining director. In the alternative,
 1222 a board may hold an election to fill the vacancy, in which case
 1223 the election procedures must conform to the requirements of
 1224 subparagraph 1. unless the association has opted out of the
 1225 statutory election process, in which case the bylaws of the
 1226 association control. Unless otherwise provided in the bylaws, a
 1227 board member appointed or elected under this subparagraph shall
 1228 fill the vacancy for the unexpired term of the seat being
 1229 filled. Filling vacancies created by recall is governed by
 1230 paragraph (f) and rules adopted by the division.

1231

1232 Notwithstanding subparagraphs (b)2. and (d)1., an association
 1233 may, by the affirmative vote of a majority of the total voting
 1234 interests, provide for a different voting and election procedure
 1235 in its bylaws, which vote may be by a proxy specifically
 1236 delineating the different voting and election procedures. The
 1237 different voting and election procedures may provide for
 1238 elections to be conducted by limited or general proxy.

1239 (f) *Recall of board members.*—Subject to ~~the provisions of~~
 1240 s. 719.301, any member of the board of administration may be
 1241 recalled and removed from office with or without cause by the
 1242 vote or agreement in writing by a majority of all the voting
 1243 interests. A special meeting of the voting interests to recall
 1244 any member of the board of administration may be called by 10
 1245 percent of the unit owners giving notice of the meeting as
 1246 required for a meeting of unit owners, and the notice shall
 1247 state the purpose of the meeting. Electronic transmission may

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1248 not be used as a method of giving notice of a meeting called in
 1249 whole or in part for this purpose.

1250 1. If the recall is approved by a majority of all voting
 1251 interests by a vote at a meeting, the recall shall be effective
 1252 as provided in this paragraph herein. The board shall duly
 1253 notice and hold a board meeting within 5 full business days
 1254 after ~~of~~ the adjournment of the unit owner meeting to recall one
 1255 or more board members. At the meeting, the board shall either
 1256 certify the recall, in which case such member or members shall
 1257 be recalled effective immediately and shall turn over to the
 1258 board within 5 full business days any and all records and
 1259 property of the association in their possession, or shall
 1260 proceed as set forth in subparagraph 3.

1261 2. If the proposed recall is by an agreement in writing by
 1262 a majority of all voting interests, the agreement in writing or
 1263 a copy thereof shall be served on the association by certified
 1264 mail or by personal service in the manner authorized by chapter
 1265 48 and the Florida Rules of Civil Procedure. The board of
 1266 administration shall duly notice and hold a meeting of the board
 1267 within 5 full business days after receipt of the agreement in
 1268 writing. At the meeting, the board shall either certify the
 1269 written agreement to recall members of the board, in which case
 1270 such members shall be recalled effective immediately and shall
 1271 turn over to the board, within 5 full business days, any and all
 1272 records and property of the association in their possession, or
 1273 proceed as described in subparagraph 3.

1274 3. If the board determines not to certify the written
 1275 agreement to recall members of the board, or does not certify
 1276 the recall by a vote at a meeting, the board shall, within 5

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1277 full business days after the board meeting, file with the
 1278 division a petition for binding arbitration pursuant to the
 1279 procedures of s. 719.1255. For purposes of this paragraph, the
 1280 unit owners who voted at the meeting or who executed the
 1281 agreement in writing shall constitute one party under the
 1282 petition for arbitration. If the arbitrator certifies the recall
 1283 as to any member of the board, the recall shall be effective
 1284 upon mailing of the final order of arbitration to the
 1285 association. If the association fails to comply with the order
 1286 of the arbitrator, the division may take action pursuant to s.
 1287 719.501. Any member so recalled shall deliver to the board any
 1288 and all records and property of the association in the member's
 1289 possession within 5 full business days after ~~of~~ the effective
 1290 date of the recall.

1291 4. If the board fails to duly notice and hold a board
 1292 meeting within 5 full business days after ~~of~~ service of an
 1293 agreement in writing or within 5 full business days after ~~of~~ the
 1294 adjournment of the unit owner recall meeting, the recall shall
 1295 be deemed effective and the board members so recalled shall
 1296 immediately turn over to the board any and all records and
 1297 property of the association.

1298 5. If the board fails to duly notice and hold the required
 1299 meeting or fails to file the required petition, the unit owner
 1300 representative may file a petition pursuant to s. 719.1255
 1301 challenging the board's failure to act. The petition must be
 1302 filed within 60 days after the expiration of the applicable 5-
 1303 full-business-day period. The review of a petition under this
 1304 subparagraph is limited to the sufficiency of service on the
 1305 board and the facial validity of the written agreement or

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1306 ballots filed.

1307 6.5- If a vacancy occurs on the board as a result of a
 1308 recall and less than a majority of the board members are
 1309 removed, the vacancy may be filled by the affirmative vote of a
 1310 majority of the remaining directors, notwithstanding any
 1311 provision to the contrary contained in this chapter. If
 1312 vacancies occur on the board as a result of a recall and a
 1313 majority or more of the board members are removed, the vacancies
 1314 shall be filled in accordance with procedural rules to be
 1315 adopted by the division, which rules need not be consistent with
 1316 this chapter. The rules must provide procedures governing the
 1317 conduct of the recall election as well as the operation of the
 1318 association during the period after a recall but prior to the
 1319 recall election.

1320 7. A board member who has been recalled may file a petition
 1321 pursuant to s. 719.1255 challenging the validity of a recall.
 1322 The petition must be filed within 60 days after the recall is
 1323 deemed certified. The association and the unit owner
 1324 representative shall be named as the respondents.

1325 8. The division may not accept for filing a recall
 1326 petition, whether filed pursuant to subparagraph 1.,
 1327 subparagraph 2., subparagraph 5., or subparagraph 7. and
 1328 regardless of whether the recall was certified, if there are 60
 1329 days or less until the scheduled reelection of the board member
 1330 sought to be recalled or if 60 days or less have not elapsed
 1331 since the election of the board member sought to be recalled.

1332 Section 15. Subsections (1), (3), (4), and (9) of section
 1333 719.108, Florida Statutes, are amended to read:

1334 719.108 Rents and assessments; liability; lien and

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1335 priority; interest; collection; cooperative ownership.-

1336 (1) A unit owner, regardless of how title is acquired,
 1337 including, without limitation, a purchaser at a judicial sale,
 1338 ~~is shall be~~ liable for all rents and assessments coming due
 1339 while the unit owner ~~owns the unit is in exclusive possession of~~
 1340 ~~a unit. Additionally, a In a voluntary transfer, the unit owner~~
 1341 ~~is in exclusive possession shall be~~ jointly and severally liable
 1342 with the previous unit owner for all unpaid rents and
 1343 assessments, late fees, interest costs, and reasonable attorney
 1344 fees incurred in an attempt to collect all such amounts that
 1345 came due against the previous unit owner for his or her share of
 1346 the common expenses up to the time of the transfer of title.
 1347 This liability is, without prejudice to the rights of the
 1348 present unit owner ~~in exclusive possession~~ to recover from the
 1349 previous unit owner any ~~the~~ amounts paid by the present unit
 1350 owner ~~in exclusive possession therefor.~~

1351 (3) Rents and assessments, and installments on them, not
 1352 paid when due bear interest at the rate provided in the
 1353 cooperative documents from the date due until paid. This rate
 1354 may not exceed the rate allowed by law and, if a rate is not
 1355 provided in the cooperative documents, accrues at 18 percent per
 1356 annum. If the cooperative documents or bylaws so provide, the
 1357 association may charge an administrative late fee in addition to
 1358 such interest, not to exceed the greater of \$25 or 5 percent of
 1359 each installment of the assessment for each delinquent
 1360 installment that the payment is late. Any payment received by an
 1361 association must be applied first to any interest accrued by the
 1362 association, then to any administrative late fee, then to any
 1363 costs and reasonable attorney ~~attorney's~~ fees incurred in

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1364 collection, and then to the delinquent assessment. The foregoing
 1365 applies notwithstanding any restrictive endorsement,
 1366 designation, or instruction placed on or accompanying a payment.
 1367 A late fee is not subject to chapter 687 or s. 719.303(4).

1368 (4) The association has a lien on each cooperative parcel
 1369 for any unpaid rents and assessments, plus interest, and any
 1370 authorized administrative late fees. If authorized by the
 1371 cooperative documents, the lien also secures reasonable attorney
 1372 ~~attorney's~~ fees incurred by the association incident to the
 1373 collection of the rents and assessments or enforcement of such
 1374 lien. The lien is effective from and after recording a claim of
 1375 lien in the public records in the county in which the
 1376 cooperative parcel is located which states the description of
 1377 the cooperative parcel, the name of the unit owner, the amount
 1378 due, and the due dates. The lien expires if a claim of lien is
 1379 not filed within 1 year after the date the assessment was due,
 1380 and the lien does not continue for longer than 1 year after the
 1381 claim of lien has been recorded unless, within that time, an
 1382 action to enforce the lien is commenced. Except as otherwise
 1383 provided in this chapter, a lien may not be filed by the
 1384 association against a cooperative parcel until 30 days after the
 1385 date on which a notice of intent to file a lien has been
 1386 delivered to the owner.

1387 (a) The notice must be sent to the unit owner at the
 1388 address of the unit by first-class United States mail and:
 1389 1. If the most recent address of the unit owner on the
 1390 records of the association is the address of the unit, the
 1391 notice must be sent by registered or certified mail, return
 1392 receipt requested, to the unit owner at the address of the unit.

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1393 2. If the most recent address of the unit owner on the
 1394 records of the association is in the United States, but is not
 1395 the address of the unit, the notice must be sent by registered
 1396 or certified mail, return receipt requested, to the unit owner
 1397 at his or her most recent address.

1398 3. If the most recent address of the unit owner on the
 1399 records of the association is not in the United States, the
 1400 notice must be sent by first-class United States mail to the
 1401 unit owner at his or her most recent address.

1402 (b) A notice that is sent pursuant to this subsection is
 1403 deemed delivered upon mailing.

1404 (9) The specific purposes of any special assessment,
 1405 including any contingent special assessment levied in
 1406 conjunction with the purchase of an insurance policy authorized
 1407 by s. 719.104(3), approved in accordance with the cooperative
 1408 documents shall be set forth in a written notice of such
 1409 assessment sent or delivered to each unit owner. The funds
 1410 collected pursuant to a special assessment may ~~shall~~ be used
 1411 only for the specific purpose or purposes set forth in such
 1412 notice or returned to the unit owners. However, upon completion
 1413 of such specific purposes, any excess funds shall be considered
 1414 common surplus and may, at the discretion of the board, either
 1415 be returned to the unit owners or applied as a credit toward
 1416 future assessments.

1417 Section 16. Paragraph (a) of subsection (3) and subsection
 1418 (5) of section 719.303, Florida Statutes, are amended to read:
 1419 719.303 Obligations of owners.—

1420 (3) The association may levy reasonable fines for failure
 1421 of the unit owner or the unit's occupant, licensee, or invitee

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1422 to comply with any provision of the cooperative documents or
 1423 reasonable rules of the association. A fine may not become a
 1424 lien against a unit. A fine may be levied on the basis of each
 1425 day of a continuing violation, with a single notice and
 1426 opportunity for hearing. However, the fine may not exceed \$100
 1427 per violation, or \$1,000 in the aggregate.

1428 (a) An association may suspend, for a reasonable period of
 1429 time, the right of a unit owner, or a unit owner's tenant,
 1430 guest, or invitee, to use the common elements, common
 1431 facilities, or any other association property for failure to
 1432 comply with any provision of the cooperative documents or
 1433 reasonable rules of the association. This paragraph does not
 1434 apply to limited common elements intended to be used only by
 1435 that unit, common elements needed to access the unit, utility
 1436 services provided to the unit, parking spaces, or elevators.

1437 (5) An association may suspend the voting rights of a unit
 1438 or member due to nonpayment of any monetary obligation due ~~to~~
 1439 the association which is more than 90 days delinquent.
 1440 Notwithstanding an association's cooperative documents, the
 1441 requirements to establish a quorum, conduct an election, or
 1442 obtain membership approval on actions under this chapter or
 1443 pursuant to the association's cooperative documents shall be
 1444 reduced by the number of suspended voting interests or consent
 1445 rights. A voting interest or consent right allocated to a unit
 1446 or member which has been suspended by the association may not be
 1447 counted towards the total number of voting interests for any
 1448 purpose, including, but not limited to, the number of voting
 1449 interests necessary to constitute a quorum, the number of voting
 1450 interests required to conduct an election, or the number of

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1451 ~~voting interests required to approve an action under this~~
 1452 ~~chapter or pursuant to the cooperative documents, articles of~~
 1453 ~~incorporation, or bylaws.~~ The suspension ends upon full payment
 1454 of all obligations currently due or overdue the association. The
 1455 notice and hearing requirements under subsection (3) do not
 1456 apply to a suspension imposed under this subsection.

1457 Section 17. Paragraph (c) of subsection (5) and subsection
 1458 (10) of section 720.303, Florida Statutes, are amended to read:

1459 720.303 Association powers and duties; meetings of board;
 1460 official records; budgets; financial reporting; association
 1461 funds; recalls.—

1462 (5) INSPECTION AND COPYING OF RECORDS.—The official records
 1463 shall be maintained within the state and must be open to
 1464 inspection and available for photocopying by members or their
 1465 authorized agents at reasonable times and places within 10
 1466 business days after receipt of a written request for access.
 1467 This subsection may be complied with by having a copy of the
 1468 official records available for inspection or copying in the
 1469 community. If the association has a photocopy machine available
 1470 where the records are maintained, it must provide parcel owners
 1471 with copies on request during the inspection if the entire
 1472 request is limited to no more than 25 pages.

1473 (c) The association may adopt reasonable written rules
 1474 governing the frequency, time, location, notice, records to be
 1475 inspected, and manner of inspections, but may not require a
 1476 parcel owner to demonstrate any proper purpose for the
 1477 inspection, state any reason for the inspection, or limit a
 1478 parcel owner's right to inspect records to less than one 8-hour
 1479 business day per month. The association may impose fees to cover

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1480 the costs of providing copies of the official records,
 1481 including, without limitation, the costs of copying. The
 1482 association may charge up to 50 cents per page for copies made
 1483 on the association's photocopier. If the association does not
 1484 have a photocopy machine available where the records are kept,
 1485 or if the records requested to be copied exceed 25 pages in
 1486 length, the association may have copies made by an outside
 1487 vendor or association management company personnel and may
 1488 charge the actual cost of copying, including any reasonable
 1489 costs involving personnel fees and charges at an hourly rate for
 1490 vendor or employee time to cover administrative costs to the
 1491 vendor or association. The association shall maintain an
 1492 adequate number of copies of the recorded governing documents,
 1493 to ensure their availability to members and prospective members.
 1494 Notwithstanding this paragraph, the following records are not
 1495 accessible to members or parcel owners:

1496 1. Any record protected by the lawyer-client privilege as
 1497 described in s. 90.502 and any record protected by the work-
 1498 product privilege, including, but not limited to, a record
 1499 prepared by an association attorney or prepared at the
 1500 attorney's express direction which reflects a mental impression,
 1501 conclusion, litigation strategy, or legal theory of the attorney
 1502 or the association and which was prepared exclusively for civil
 1503 or criminal litigation or for adversarial administrative
 1504 proceedings or which was prepared in anticipation of such
 1505 litigation or proceedings until the conclusion of the litigation
 1506 or proceedings.

1507 2. Information obtained by an association in connection
 1508 with the approval of the lease, sale, or other transfer of a

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1509 parcel.

1510 3. Personnel records of association or management company
 1511 ~~the association's~~ employees, including, but not limited to,
 1512 disciplinary, payroll, health, and insurance records. For
 1513 purposes of this subparagraph, the term "personnel records" does
 1514 not include written employment agreements with an association or
 1515 management company employee or budgetary or financial records
 1516 that indicate the compensation paid to an association or
 1517 management company employee.

1518 4. Medical records of parcel owners or community residents.

1519 5. Social security numbers, driver ~~driver's~~ license
 1520 numbers, credit card numbers, electronic mailing addresses,
 1521 telephone numbers, facsimile numbers, emergency contact
 1522 information, any addresses for a parcel owner other than as
 1523 provided for association notice requirements, and other personal
 1524 identifying information of any person, excluding the person's
 1525 name, parcel designation, mailing address, and property address.
 1526 However, an owner may consent in writing to the disclosure of
 1527 protected information described in this subparagraph. The
 1528 association is not liable for the disclosure of information that
 1529 is protected under this subparagraph if the information is
 1530 included in an official record of the association and is
 1531 voluntarily provided by an owner and not requested by the
 1532 association.

1533 6. Any electronic security measure that is used by the
 1534 association to safeguard data, including passwords.

1535 7. The software and operating system used by the
 1536 association which allows the manipulation of data, even if the
 1537 owner owns a copy of the same software used by the association.

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1538 The data is part of the official records of the association.

1539 (10) RECALL OF DIRECTORS.—

1540 (a)1. Regardless of any provision to the contrary contained
 1541 in the governing documents, subject to the provisions of s.
 1542 720.307 regarding transition of association control, any member
 1543 of the board of directors may be recalled and removed from
 1544 office with or without cause by a majority of the total voting
 1545 interests.

1546 2. When the governing documents, including the declaration,
 1547 articles of incorporation, or bylaws, provide that only a
 1548 specific class of members is entitled to elect a board director
 1549 or directors, only that class of members may vote to recall
 1550 those board directors so elected.

1551 (b)1. Board directors may be recalled by an agreement in
 1552 writing or by written ballot without a membership meeting. The
 1553 agreement in writing or the written ballots, or a copy thereof,
 1554 shall be served on the association by certified mail or by
 1555 personal service in the manner authorized by chapter 48 and the
 1556 Florida Rules of Civil Procedure.

1557 2. The board shall duly notice and hold a meeting of the
 1558 board within 5 full business days after receipt of the agreement
 1559 in writing or written ballots. At the meeting, the board shall
 1560 either certify the written ballots or written agreement to
 1561 recall a director or directors of the board, in which case such
 1562 director or directors shall be recalled effective immediately
 1563 and shall turn over to the board within 5 full business days any
 1564 and all records and property of the association in their
 1565 possession, or proceed as described in paragraph (d).

1566 3. When it is determined by the department pursuant to

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1567 binding arbitration proceedings that an initial recall effort
 1568 was defective, written recall agreements or written ballots used
 1569 in the first recall effort and not found to be defective may be
 1570 reused in one subsequent recall effort. However, in no event is
 1571 a written agreement or written ballot valid for more than 120
 1572 days after it has been signed by the member.

1573 4. Any rescission or revocation of a member's written
 1574 recall ballot or agreement must be in writing and, in order to
 1575 be effective, must be delivered to the association before the
 1576 association is served with the written recall agreements or
 1577 ballots.

1578 5. The agreement in writing or ballot shall list at least
 1579 as many possible replacement directors as there are directors
 1580 subject to the recall, when at least a majority of the board is
 1581 sought to be recalled; the person executing the recall
 1582 instrument may vote for as many replacement candidates as there
 1583 are directors subject to the recall.

1584 (c)1. If the declaration, articles of incorporation, or
 1585 bylaws specifically provide, the members may also recall and
 1586 remove a board director or directors by a vote taken at a
 1587 meeting. If so provided in the governing documents, a special
 1588 meeting of the members to recall a director or directors of the
 1589 board of administration may be called by 10 percent of the
 1590 voting interests giving notice of the meeting as required for a
 1591 meeting of members, and the notice shall state the purpose of
 1592 the meeting. Electronic transmission may not be used as a method
 1593 of giving notice of a meeting called in whole or in part for
 1594 this purpose.

1595 2. The board shall duly notice and hold a board meeting

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1596 within 5 full business days after the adjournment of the member
 1597 meeting to recall one or more directors. At the meeting, the
 1598 board shall certify the recall, in which case such member or
 1599 members shall be recalled effective immediately and shall turn
 1600 over to the board within 5 full business days any and all
 1601 records and property of the association in their possession, or
 1602 shall proceed as set forth in subparagraph (d).

1603 (d) If the board determines not to certify the written
 1604 agreement or written ballots to recall a director or directors
 1605 of the board or does not certify the recall by a vote at a
 1606 meeting, the board shall, within 5 full business days after the
 1607 meeting, file with the department a petition for binding
 1608 arbitration pursuant to the applicable procedures in ss.
 1609 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
 1610 the purposes of this section, the members who voted at the
 1611 meeting or who executed the agreement in writing shall
 1612 constitute one party under the petition for arbitration. If the
 1613 arbitrator certifies the recall as to any director or directors
 1614 of the board, the recall will be effective upon mailing of the
 1615 final order of arbitration to the association. The director or
 1616 directors so recalled shall deliver to the board any and all
 1617 records of the association in their possession within 5 full
 1618 business days after the effective date of the recall.

1619 (e) If a vacancy occurs on the board as a result of a
 1620 recall and less than a majority of the board directors are
 1621 removed, the vacancy may be filled by the affirmative vote of a
 1622 majority of the remaining directors, notwithstanding any
 1623 provision to the contrary contained in this subsection or in the
 1624 association documents. If vacancies occur on the board as a

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1625 result of a recall and a majority or more of the board directors
 1626 are removed, the vacancies shall be filled by members voting in
 1627 favor of the recall; if removal is at a meeting, any vacancies
 1628 shall be filled by the members at the meeting. If the recall
 1629 occurred by agreement in writing or by written ballot, members
 1630 may vote for replacement directors in the same instrument in
 1631 accordance with procedural rules adopted by the division, which
 1632 rules need not be consistent with this subsection.

1633 (f) If the board fails to duly notice and hold a board
 1634 meeting within 5 full business days after service of an
 1635 agreement in writing or within 5 full business days after the
 1636 adjournment of the member recall meeting, the recall shall be
 1637 deemed effective and the board directors so recalled shall
 1638 immediately turn over to the board all records and property of
 1639 the association.

1640 (g) If the board fails to duly notice and hold the required
 1641 meeting or fails to file the required petition, the unit owner
 1642 representative may file a petition pursuant to s. 718.1255
 1643 challenging the board's failure to act. The petition must be
 1644 filed within 60 days after the expiration of the applicable 5-
 1645 full-business-day period. The review of a petition under this
 1646 paragraph is limited to the sufficiency of service on the board
 1647 and the facial validity of the written agreement or ballots
 1648 filed.

1649 ~~(h)(g)~~ If a director who is removed fails to relinquish his
 1650 or her office or turn over records as required under this
 1651 section, the circuit court in the county where the association
 1652 maintains its principal office may, upon the petition of the
 1653 association, summarily order the director to relinquish his or

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1654 her office and turn over all association records upon
 1655 application of the association.

1656 ~~(i)(h)~~ The minutes of the board meeting at which the board
 1657 decides whether to certify the recall are an official
 1658 association record. The minutes must record the date and time of
 1659 the meeting, the decision of the board, and the vote count taken
 1660 on each board member subject to the recall. In addition, when
 1661 the board decides not to certify the recall, as to each vote
 1662 rejected, the minutes must identify the parcel number and the
 1663 specific reason for each such rejection.

1664 ~~(j)(i)~~ When the recall of more than one board director is
 1665 sought, the written agreement, ballot, or vote at a meeting
 1666 shall provide for a separate vote for each board director sought
 1667 to be recalled.

1668 (k) A board member who has been recalled may file a
 1669 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the
 1670 rules adopted challenging the validity of the recall. The
 1671 petition must be filed within 60 days after the recall is deemed
 1672 certified. The association and the unit owner representative
 1673 shall be named as respondents.

1674 (l) The division may not accept for filing a recall
 1675 petition, whether filed pursuant to paragraph (b), paragraph
 1676 (c), paragraph (g), or paragraph (k) and regardless of whether
 1677 the recall was certified, if there are 60 days or less until the
 1678 scheduled reelection of the board member sought to be recalled
 1679 or if 60 days or less have not elapsed since the election of the
 1680 board member sought to be recalled.

1681 Section 18. Subsections (2) and (4) of section 720.305,
 1682 Florida Statutes, are amended to read:

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1683 720.305 Obligations of members; remedies at law or in
1684 equity; levy of fines and suspension of use rights.-

1685 (2) The association may levy reasonable fines of up to \$100
1686 per violation against any member or any member's tenant, guest,
1687 or invitee for the failure of the owner of the parcel or its
1688 occupant, licensee, or invitee to comply with any provision of
1689 the declaration, the association bylaws, or reasonable rules of
1690 the association. A fine may be levied for each day of a
1691 continuing violation, with a single notice and opportunity for
1692 hearing, except that the fine may not exceed \$1,000 in the
1693 aggregate unless otherwise provided in the governing documents.
1694 A fine of less than \$1,000 may not become a lien against a
1695 parcel. In any action to recover a fine, the prevailing party is
1696 entitled to reasonable attorney ~~attorney's~~ fees and costs from
1697 the nonprevailing party as determined by the court.

1698 (a) An association may suspend, for a reasonable period of
1699 time, the right of a member, or a member's tenant, guest, or
1700 invitee, to use common areas and facilities for the failure of
1701 the owner of the parcel or its occupant, licensee, or invitee to
1702 comply with any provision of the declaration, the association
1703 bylaws, or reasonable rules of the association. This paragraph
1704 does not apply to that portion of common areas used to provide
1705 access or utility services to the parcel. A suspension may not
1706 impair the right of an owner or tenant of a parcel to have
1707 vehicular and pedestrian ingress to and egress from the parcel,
1708 including, but not limited to, the right to park.

1709 (b) A fine or suspension may not be imposed without at
1710 least 14 days' notice to the person sought to be fined or
1711 suspended and an opportunity for a hearing before a committee of

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1712 at least three members appointed by the board who are not
1713 officers, directors, or employees of the association, or the
1714 spouse, parent, child, brother, or sister of an officer,
1715 director, or employee. If the committee, by majority vote, does
1716 not approve a proposed fine or suspension, it may not be
1717 imposed. If the association imposes a fine or suspension, the
1718 association must provide written notice of such fine or
1719 suspension by mail or hand delivery to the parcel owner and, if
1720 applicable, to any tenant, licensee, or invitee of the parcel
1721 owner.

1722 (4) An association may suspend the voting rights of a
1723 parcel or member for the nonpayment of any monetary obligation
1724 due ~~to~~ the association that is more than 90 days delinquent.
1725 Notwithstanding an association's governing documents, the
1726 requirements to establish a quorum, conduct an election, or
1727 obtain membership approval on actions under this chapter or
1728 pursuant to the association's governing documents shall be
1729 reduced by the number of suspended voting interests or consent
1730 rights. A voting interest or consent right allocated to a parcel
1731 or member which has been suspended by the association may not be
1732 counted towards the total number of voting interests for any
1733 purpose, including, but not limited to, the number of voting
1734 interests necessary to constitute a quorum, the number of voting
1735 interests required to conduct an election, or the number of
1736 voting interests required to approve an action under this
1737 chapter or pursuant to the governing documents. The notice and
1738 hearing requirements under subsection (2) do not apply to a
1739 suspension imposed under this subsection. The suspension ends
1740 upon full payment of all obligations currently due or overdue to

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1741 the association.

1742 Section 19. Paragraph (d) is added to subsection (1) of
1743 section 720.306, Florida Statutes, and subsection (9) of that
1744 section is amended, to read:

1745 720.306 Meetings of members; voting and election
1746 procedures; amendments.—

1747 (1) QUORUM; AMENDMENTS.—

1748 (d) The Legislature finds that the procurement of mortgagee
1749 consent to amendments that do not affect the rights or interests
1750 of mortgagees is an unreasonable and substantial logistical and
1751 financial burden on the parcel owners and that there is a
1752 compelling state interest in enabling the members of an
1753 association to approve amendments to the association's governing
1754 documents through legal means. Accordingly, and notwithstanding
1755 any provision to the contrary contained in this paragraph:

1756 1. As to any mortgage recorded on or after July 1, 2012,
1757 any provision in the association's governing documents that
1758 requires the consent or joinder of some or all mortgagees of
1759 parcels or any other portion of the association's common areas
1760 to amend the association's governing documents or for any other
1761 matter is enforceable only as to amendments to the association's
1762 governing documents that adversely affect the priority of the
1763 mortgagee's lien or the mortgagee's rights to foreclose its lien
1764 or that otherwise materially affect the rights and interests of
1765 the mortgagees.

1766 2. As to mortgages recorded before July 1, 2012, any
1767 existing provisions in the association's governing documents
1768 requiring mortgagee consent are enforceable.

1769 3. In securing consent or joinder, the association is

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1770 entitled to rely upon the public records to identify the holders
1771 of outstanding mortgages. The association may use the address
1772 provided in the original recorded mortgage document, unless
1773 there is a different address for the holder of the mortgage in a
1774 recorded assignment or modification of the mortgage, which
1775 recorded assignment or modification must reference the official
1776 records book and page on which the original mortgage was
1777 recorded. Once the association has identified the recorded
1778 mortgages of record, the association shall, in writing, request
1779 of each parcel owner whose parcel is encumbered by a mortgage of
1780 record any information the owner has in his or her possession
1781 regarding the name and address of the person to whom mortgage
1782 payments are currently being made. Notice shall be sent to such
1783 person if the address provided in the original recorded mortgage
1784 document is different from the name and address of the mortgagee
1785 or assignee of the mortgage as shown by the public record. The
1786 association is deemed to have complied with this requirement by
1787 making the written request of the parcel owners required under
1788 this subparagraph. Any notices required to be sent to the
1789 mortgagees under this subparagraph shall be sent to all
1790 available addresses provided to the association.

1791 4. Any notice to the mortgagees required under subparagraph
1792 3. may be sent by a method that establishes proof of delivery,
1793 and any mortgagee who fails to respond within 60 days after the
1794 date of mailing is deemed to have consented to the amendment.

1795 5. For those amendments requiring mortgagee consent on or
1796 after July 1, 2012, in the event mortgagee consent is provided
1797 other than by properly recorded joinder, such consent shall be
1798 evidenced by affidavit of the association recorded in the public

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1799 records of the county in which the declaration is recorded.
 1800 6. Any amendment adopted without the required consent of a
 1801 mortgagee is voidable only by a mortgagee who was entitled to
 1802 notice and an opportunity to consent. An action to void an
 1803 amendment is subject to the statute of limitations beginning 5
 1804 years after the date of discovery as to the amendments described
 1805 in subparagraph 1. and 5 years after the date of recordation of
 1806 the certificate of amendment for all other amendments. This
 1807 subparagraph applies to all mortgages, regardless of the date of
 1808 recordation of the mortgage.

1809 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—

1810 (a) Elections of directors must be conducted in accordance
 1811 with the procedures set forth in the governing documents of the
 1812 association. All members of the association are eligible to
 1813 serve on the board of directors, and a member may nominate
 1814 himself or herself as a candidate for the board at a meeting
 1815 where the election is to be held or, if the election process
 1816 allows voting by absentee ballot, in advance of the balloting.
 1817 Except as otherwise provided in the governing documents, boards
 1818 of directors must be elected by a plurality of the votes cast by
 1819 eligible voters. Any challenge to the election process must be
 1820 commenced within 60 days after the election results are
 1821 announced.

1822 (b) A person who is delinquent in the payment of any fee,
 1823 fine, or other monetary obligation to the association for more
 1824 than 90 days is not eligible for board membership. A person who
 1825 has been convicted of any felony in this state or in a United
 1826 States District or Territorial Court, or has been convicted of
 1827 any offense in another jurisdiction which would be considered a

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1828 felony if committed in this state, is not eligible for board
 1829 membership unless such felon's civil rights have been restored
 1830 for at least 5 years as of the date on which such person seeks
 1831 election to the board. The validity of any action by the board
 1832 is not affected if it is later determined that a member of the
 1833 board is ineligible for board membership.

1834 (c) Any election dispute between a member and an
 1835 association must be submitted to mandatory binding arbitration
 1836 with the division. Such proceedings must be conducted in the
 1837 manner provided by s. 718.1255 and the procedural rules adopted
 1838 by the division. Unless otherwise provided in the bylaws, any
 1839 vacancy occurring on the board before the expiration of a term
 1840 may be filled by an affirmative vote of the majority of the
 1841 remaining directors, even if the remaining directors constitute
 1842 less than a quorum, or by the sole remaining director. In the
 1843 alternative, a board may hold an election to fill the vacancy,
 1844 in which case the election procedures must conform to the
 1845 requirements of the governing documents. Unless otherwise
 1846 provided in the bylaws, a board member appointed or elected
 1847 under this section is appointed for the unexpired term of the
 1848 seat being filled. Filling vacancies created by recall is
 1849 governed by s. 720.303(10) and rules adopted by the division.

1850 Section 20. Paragraphs (b) and (d) of subsection (2) of
 1851 section 720.3085, Florida Statutes, are amended to read:

1852 720.3085 Payment for assessments; lien claims.—

1853 (2)

1854 (b) A parcel owner, regardless of how the parcel owner has
 1855 acquired title, including, but not limited to, by purchase at a
 1856 foreclosure sale, is jointly and severally liable with the

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1857 previous parcel owner for all unpaid assessments, late fees,
1858 interest, costs, and reasonable attorney fees incurred by the
1859 association in an attempt to collect all such amounts that came
1860 due up to the time of transfer of title. This liability is
1861 without prejudice to any right the present parcel owner may have
1862 to recover any amounts paid by the present owner from the
1863 previous owner.

1864 (d) An association, or its successor or assignee, that
1865 acquires title to a parcel through the foreclosure of its lien
1866 for assessments is not liable for any unpaid assessments, late
1867 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
1868 that came due before the association's acquisition of title in
1869 favor of any other association, as defined in s. 718.103(2) or
1870 s. 720.301(9), which holds a ~~superior~~ lien interest on the
1871 parcel. This paragraph is intended to clarify existing law.

1872 Section 21. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic _____

Bill Number 680-bill
(if applicable)

Name Diana Ferguson

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-661-6788

Tall FL 32308
City State Zip

E-mail dferguson@reughlaw.com

Speaking: For Against Information

Representing Community Advocacy Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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

2/20/12
Meeting Date

Topic Safe Harbor

Bill Number 680-Amd

Name Diana Ferguson

Amendment Barcode 929624
(if applicable)

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-681-6788

Tall FL 32308
City State Zip

E-mail dferguson@republican.com

Speaking: For Against Information

Representing Community Advocacy Network

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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2.20.12

Meeting Date

Topic Residential Properties Bill Number 680
Name JARED ROSS Amendment Barcode 929624
Job Title Director of Legislative Affairs (if applicable)
Address 3773 Commonwealth Blvd. Phone 850-590-6570
Street Tallahassee FL 32311 E-mail jared.ross@lscu.coop
City State Zip

Speaking: For Against Information

Representing LEAGUE OF SOUTHEASTERN CREDIT UNIONS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

6061

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Residential Properties

Bill Number 680
(if applicable)

Name Yeline Goin (Ja-lee-nee)

Amendment Barcode Thrasher
929624 2+3
(if applicable)
amendments

Job Title Executive Director of Attorney

Address 204 S. Monroe St
Street

Phone 850-284-2460

Tallahassee, FL 32301
City State Zip

E-mail ygoin@becker-pollakoff.com

Speaking: For Against Information

Representing Community Association Leadership Lobby (CALC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic 2 amendments

Bill Number 480

Name Anthony DiMarco

Amendment Barcode 929624 (if applicable)

Job Title EVP

294568 (if applicable)

Address 1001 Thormanville Rd.

Phone 224-2265

Jacksonville FL 32303
City State Zip

E-mail adimarco@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Association/Condo Fees

Bill Number 680
(if applicable)

Name Evan Power

Amendment Barcode 929624
(if applicable)

Job Title Lobbyist

Address 200 W. College Ave, Suite 204

Phone (880) 222-9911

Street

Tallahassee

FL

32303

City

State

Zip

E-mail epowers@gomezbarber.com

Speaking: For Against Information

Representing Armos, 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Residential Properties

Bill Number 680

Name Lynn Drysdale

Amendment Barcode 696256
(if applicable)

Job Title Managing Attorney

Address 126 West Adams Street

Phone (904) 356-8371 x306

Jacksonville, FL 32202
City State Zip

E-mail lynn.drysdale@javallegal
aud.org

Speaking: For ^{Amendment} Against Information

Representing Jacksonville Area Legal Aid, 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Residential Properties

Bill Number 680
(if applicable)

Name Alice Vickers

Amendment Barcode 696256
(if applicable)

Job Title Attorney

Address 623 Beard St.

Phone 850 556-3121

Tallahassee, FL 32303
Street City State Zip

E-mail Alice@Fcan.org

Speaking: For Against Information
Amendment

Representing Florida Consumer Action Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic FORECLOSURE Bill Number 680

Name FRANK PITTS Amendment Barcode 696-256
(if applicable)
(if applicable)

Job Title _____

Address 2842 ~~GLAND~~ GLANINDL CIR. Phone 321-622-4142
Street

MEL BOURNE E-mail _____
City State Zip

Speaking: For Against Information

Representing PICO UNITED FLORIDA

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic RESIDENTIAL PROPERTIES

Bill Number SB 680
(if applicable)

Name WOODY S. RYAN

Amendment Barcode _____
(if applicable)

Job Title N/A

Address 1675 FORTUNA STREET

Phone 239-253-4802

SARASOTA FL. 34239
City State Zip

E-mail PATRICK HENRY 63rd CON
CAST. NET

Speaking: For Against Information

Representing Concerned Citizen

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Residential Properties
Name Linda Shaffer
Job Title _____

Bill Number SB 680
(if applicable)
Amendment Barcode _____
(if applicable)

Address 847 Hampton Wood Ct.
Street
Sarasota FL 34232
City State Zip

Phone 9413779930
E-mail euphoriazone@aol.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Judiciary Committee

BILL: CS/SB 1276

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Hiring, Leasing, or Obtaining Personal Property or Equipment with Intent to Defraud

DATE: February 17, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Irwin	Cibula	JU	Favorable
3.			BI	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends s. 812.155, F.S., to revise provisions subjecting a person to criminal prosecution for failing to return rental property or equipment. Specifically, the bill:

- Authorizes a courier service with tracking capability to be used as an additional method that satisfies the requirement to deliver a demand for the return for overdue rental property or equipment before criminal prosecution;
- Increases the evidentiary value of certain acts of misconduct in a criminal prosecution for failing to return the rental property or equipment;
- Prohibits a lessee from using the possession of rental property or equipment by a third party as a defense to criminal prosecution, unless the lessee provides documentation that the third party obtained the property or equipment without the consent of the lessee; and
- Provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles.

This bill substantially amends section 812.155, Florida Statutes.

II. Present Situation:

Section 812.155, F.S., specifies acts constituting three theft-related crimes: obtaining personal property or equipment by trick, deceit, or fraudulent or willful false representation; hiring or leasing personal property or equipment with the intent to defraud; and failing to redeliver hired or leased personal property or equipment. Depending upon the value of the property, the crimes are punishable as either a second degree misdemeanor or a third degree felony.¹

Section 812.155(1), F.S., prohibits a person from obtaining custody of personal property or equipment, with the intent to defraud the owner, whether through trickery, deceit, or fraudulent or willful false representation. Section 812.155(2), F.S., prohibits a person from hiring or leasing personal property with the intent to defraud the owner of the rent payable for the possession or use of the property. Paragraph (4)(a) of the statute provides that evidence of fraudulent intent may be proven by showing that a person obtained the property under false pretenses; absconded without payment; or by removing or attempting to remove the property from the county without the owner's permission.²

In order for there to be a prosecution for the conduct prohibited by s. 812.155, F.S., the rental agreement (or an addendum to the agreement) must contain the following statement and the statement must be initialed by the person hiring or leasing the property:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are evidence of abandonment or refusal to redeliver the property, punishable in accordance with section 812.155, Florida Statutes.³

Section 812.155(3), F.S., specifically prohibits a person from knowingly abandoning or refusing to return the leased personal property or equipment to the owner (or his or her agent), as agreed, at the end of the rental period. As a prerequisite to prosecution, the statute requires a demand for return of the property to be made in person, by hand delivery, or by certified mail, return receipt requested, addressed to the lessee's address shown in the rental contract.⁴

The statute provides that evidence of abandonment or refusal to redeliver rental property includes failing to redeliver the property or equipment within 5 days after the delivery of a demand for the return of the property or equipment.⁵ Such evidence also includes failing to pay rent for the use of the property or equipment after the rental period or failing to pay the costs to repair or replace damaged equipment.⁶

¹ The crimes set forth in subsections (1)-(3) are misdemeanors of the second degree, punishable by up to 60 days incarceration and a \$500 fine, if the value of the item is less than \$300. If the value of the item is \$300 or more, the crimes are third degree felonies, punishable by up to 5 years incarceration and a \$1,000 fine. *See* s. 812.155(1)-(3), F.S.

² Section 812.155(4)(a), F.S.

³ Section 812.155(6), F.S.

⁴ Section 812.155(5), F.S.

⁵ Section 812.155(4)(b), F.S.

⁶ Section 812.155(4)(c), F.S.

III. Effect of Proposed Changes:

The bill provides an additional method by which the owner or agent of the owner of leased personal property or equipment may deliver a demand for the return of the property or equipment. Subsection (4) of s. 812.155, F.S., is amended by the bill to allow the demand to be delivered by a courier service with tracking capability to the address of the lessee as it appears on the rental contract.

The bill adds a subsection to provide that possession of personal property or equipment by a third party is not a defense for failure to return the property unless the lessee provides documentation to the owner or the court showing that the third party obtained the property without the consent of the lessor.

The bill creates a permissive inference⁷ in paragraphs (4)(b) and (c) of s. 812.155, F.S., which would give certain types of evidence of abandonment or refusal to return the personal property or equipment greater weight than it has under the current statute.

Specifically, under existing law, the failure to redeliver property or equipment within 5 days after the delivery of the demand or the failure to pay certain amounts due is “evidence” of abandonment or refusal to redeliver the property or equipment. Under the bill, such conduct is “prima facie evidence”⁸ of abandonment or refusal to redeliver the property or equipment.

The bill provides that, so long as the property owner has fulfilled the requirements of s. 812.155, F.S., he or she may report a rented vehicle as stolen and have it listed on any local or national registry of stolen vehicles.

The bill also makes organizational and stylistic changes to subsections (1)-(3) of s. 812.155, F.S. These changes are not substantive in nature.

This bill takes effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ A permissive inference is “a presumption that a trier of fact is free to accept or reject from a given set of facts.” BLACK’S LAW DICTIONARY (9th ed. 2009).

⁸ Prima facie evidence is “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.” BLACK’S LAW DICTIONARY (9th ed. 2009).

D. Other Constitutional Issues:

A permissive inference may impermissibly shift the burden of proof of the elements of an offense from the prosecution, where it normally lies in a criminal trial, to the defense. This could give rise to a constitutional claim based on the Due Process Clause.

As pointed out in the *Rygwelski* case, when the Florida Supreme Court applies the U.S. Supreme Court framework regarding permissive inferences and mandatory presumptions, it has construed mandatory statutory language as creating a permissive inference numerous times.⁹

For example, in *State v. Kahler*, 232 So. 2d 166 (Fla.1970), the court reviewed a statute providing that possession of an improperly labeled drug was prima facie evidence that such possession was unlawful. The Court opined that “[c]onstitutional guarantees are not violated as long as there is a rational connection between the fact proven and the ultimate fact presumed and reasonable opportunity is afforded to rebut the presumption.”¹⁰ The court further stated that statutory language providing that proof of one fact is prima facie evidence of another fact does not relieve the state of its burden of proof.¹¹

According to the *Rygwelski* court’s reading of *Kahler*, “*Kahler* establishes that such language creates only a permissive inference (an evidentiary device that does not relieve the State of its burden).”¹²

The meaning and application of a provision from s. 812.155, F.S. (2005), was at issue in the *Rygwelski* case. The statutory language at that time stated that the failure to redeliver property within five days after receipt of, or within five days after return receipt from, the certified mailing of the demand for return “is prima facie evidence of fraudulent intent.”¹³ The court found that the language created a permissive inference according to existing Florida precedent like the *Kahler* case mentioned above.¹⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The amendments made to s. 812.155, F.S., are likely to result in a quicker and more positive resolution of criminal cases for owners of leased or hired personal property or equipment.

⁹ *State v. Rygwelski*, 899 So. 2d 498, 502 (Fla. 2nd DCA 2005).

¹⁰ *State v. Kahler*, 232 So. 2d 166, 168 (Fla.1970).

¹¹ *Id.*

¹² *Rygwelski*, 899 So. 2d at 502.

¹³ Section 812.155(4)(b), F.S. (2005).

¹⁴ *Rygwelski*, 899 So. 2d at 504 (Fla. 2nd DCA 2005). See also *State v. Higby*, 899 So. 2d 1269 (Fla. 2nd DCA 2005) and *Smith v. State*, 9 So. 3d 702 (Fla. 2nd DCA 2009).

C. Government Sector Impact:

The bill does not create any new criminal offenses. Although the amendments made by the bill could result in a greater number of prosecutions under s. 812.155, F.S., that end in convictions, it is unlikely that there would be a prison bed impact as the felony offenses in the statute are unranked third degree felonies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill inconsistently replaced the word “redeliver” in existing law with “return” in s. 812.155, F.S. The Legislature may wish to replace all instances of “redeliver” with “return.”

The bill provides that the possession of rental property by a third party does not alleviate the lessee of the responsibility to return the property, unless the lessee provides “documentation” to the court or property owner which demonstrates that the property was obtained without the lessee’s consent. The bill does not specify what documentation is sufficient to alleviate the lessee’s responsibility to return the property. The Legislature may wish to revise the bill to clarify that the lessee must provide the property owner or the court with documentation that the lessee reported the property as stolen to a law enforcement agency.

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

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

CS by Criminal Justice on January 25, 2012:

- Deletes the language that created a rebuttable presumption of abandonment or refusal to return rented property or equipment if the property was not returned to the owner within 5 days of notice having been sent to the lessee by the methods specified in the bill. The bill now creates a permissive inference (prima facie evidence) where the property is not returned within 5 days of notice having been delivered, or of the certified mail delivery being shown to have failed by return receipt. The amended bill also eliminates the rebuttable presumption of abandonment or refusal to return the property where the lessee fails to pay any amount due which is incurred after the rental period has expired. The rebuttable presumption is replaced with the prima facie evidence standard.
- Eliminates the defense that the lessee is not in possession of the property where the lessee provides documentation to the owner or the court that the property or equipment was obtained without the lessee’s consent.
- Provides that if the lessor has fulfilled the requirements of the statute, he or she may report an unreturned vehicle as a stolen vehicle to law enforcement authorities.

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 the Committee on Criminal Justice; and Senator Latvala

591-02369-12

20121276c1

1 A bill to be entitled
 2 An act relating to hiring, leasing, or obtaining
 3 personal property or equipment with the intent to
 4 defraud; amending s. 812.155, F.S.; providing that in
 5 a prosecution, failing to redeliver property or
 6 equipment within a specified time after receiving the
 7 demand for return from a courier service with tracking
 8 capability or by certified mail, return receipt
 9 requested, or within a specified time after delivery
 10 by the courier service or return receipt from the
 11 certified mailing of the demand for return, is prima
 12 facie evidence of abandonment or refusal to redeliver
 13 the property or equipment; providing that notice
 14 mailed by delivery by courier with tracking capability
 15 to the address given by the renter at the time of the
 16 rental is sufficient and equivalent to notice having
 17 been received by the renter, if the notice is returned
 18 undelivered; providing that in a prosecution for
 19 failing to pay any amount due which is incurred as the
 20 result of the failure to redeliver property or
 21 equipment after the rental period expires, and after
 22 the demand for return is made, is prima facie evidence
 23 of abandonment or refusal to redeliver the property or
 24 equipment; providing that a demand for return of
 25 overdue property or equipment and for payment of
 26 amounts due may be made by courier service with
 27 tracking capability; providing that possession of
 28 personal property or equipment by a third party does
 29 not alleviate the lessee of his or her obligation to

Page 1 of 6

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

591-02369-12

20121276c1

30 return the personal property or equipment according to
 31 the terms stated in the contract; providing an
 32 exception when the personal property or equipment was
 33 obtained without the lessee's consent; providing that
 34 a lessor of a vehicle that is not returned at the
 35 conclusion of a lease is entitled to report the
 36 vehicle as stolen to a law enforcement agency and have
 37 the vehicle listed as stolen on any local or national
 38 registry of such vehicles; providing an effective
 39 date.
 40

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

42
 43 Section 1. Section 812.155, Florida Statutes, is amended to
 44 read:

45 812.155 Hiring, leasing, or obtaining personal property or
 46 equipment with the intent to defraud; failing to return hired or
 47 leased personal property or equipment; rules of evidence.—

48 (1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—Whoever,
 49 with the intent to defraud the owner or any person lawfully
 50 possessing any personal property or equipment, obtains the
 51 custody of ~~the such~~ personal property or equipment by trick,
 52 deceit, or fraudulent or willful false representation commits
 53 ~~shall be guilty of~~ a misdemeanor of the second degree,
 54 punishable as provided in s. 775.082 or s. 775.083, unless the
 55 value of the personal property or equipment is of a value of
 56 \$300 or more; in that ~~case event~~ the person commits violation
 57 ~~constitutes~~ a felony of the third degree, punishable as provided
 58 in s. 775.082, s. 775.083, or s. 775.084.

Page 2 of 6

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591-02369-12

20121276c1

59 (2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever,
 60 with intent to defraud the owner or any person lawfully
 61 possessing ~~any~~ personal property or equipment of the rental
 62 thereof, hires or leases the personal property or equipment from
 63 the owner or the owner's agents or any person in lawful
 64 possession thereof commits ~~shall, upon conviction, be guilty of~~
 65 a misdemeanor of the second degree, punishable as provided in s.
 66 775.082 or s. 775.083, unless the value of the personal property
 67 or equipment is of a value of \$300 or more; in that case event
 68 the person commits ~~violation constitutes~~ a felony of the third
 69 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 70 775.084.

71 (3) FAILURE TO RETURN ~~REDELIVER~~ HIRED OR LEASED PERSONAL
 72 PROPERTY.—Whoever, after hiring or leasing ~~any~~ personal property
 73 or equipment under an agreement to return ~~redeliver~~ the personal
 74 property ~~same~~ to the person letting the ~~such~~ personal property
 75 or equipment or his or her agent at the termination of the
 76 period for which it was let, shall, without the consent of the
 77 ~~such~~ person or persons knowingly abandon or refuse to return
 78 ~~redeliver~~ the personal property or equipment as agreed, commits
 79 ~~shall, upon conviction, be guilty of~~ a misdemeanor of the second
 80 degree, punishable as provided in s. 775.082 or s. 775.083,
 81 unless the value of the personal property or equipment is of a
 82 value of \$300 or more; in that case event the person commits
 83 ~~violation constitutes~~ a felony of the third degree, punishable
 84 as provided in s. 775.082, s. 775.083, or s. 775.084.

85 (4) EVIDENCE.—

86 (a) In a prosecution ~~prosecutions~~ under this section,
 87 obtaining the property or equipment under false pretenses;

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591-02369-12

20121276c1

88 absconding without payment; or removing or attempting to remove
 89 the property or equipment from the county without the express
 90 written consent of the lessor, is evidence of fraudulent intent.

91 (b) In a prosecution under subsection (3), failure to
 92 redeliver the property or equipment within 5 days after
 93 receiving the demand for return from a courier service with
 94 tracking capability or by certified mail, return receipt
 95 requested ~~receipt of~~, or within 5 days after delivery by the
 96 courier service or return receipt from, the certified mailing of
 97 the demand for return, is prima facie evidence of abandonment or
 98 refusal to redeliver the property or equipment. Notice mailed by
 99 certified mail, return receipt requested, or delivery by courier
 100 with tracking capability to the address given by the renter at
 101 the time of rental is ~~shall be deemed~~ sufficient and equivalent
 102 to notice having been received by the renter, should the notice
 103 be returned undelivered.

104 (c) In a prosecution under subsection (3), failure to pay
 105 any amount due which is incurred as the result of the failure to
 106 redeliver property or equipment after the rental period expires,
 107 and after the demand for return is made, is prima facie evidence
 108 of abandonment or refusal to redeliver the property or
 109 equipment. Amounts due include unpaid rental for the time period
 110 during which the property or equipment was not returned and
 111 include the lesser of the cost of repairing or replacing the
 112 property or equipment if it has been damaged.

113 (5) DEMAND FOR RETURN.—Demand for return of overdue
 114 property or equipment and for payment of amounts due may be made
 115 in person, by hand delivery, ~~or~~ by certified mail, return
 116 receipt requested, or by courier service with tracking

Page 4 of 6

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591-02369-12 20121276c1

117 capability, addressed to the lessee's address shown in the
118 rental contract.

119 (6) NOTICE REQUIRED.—As a prerequisite to prosecution under
120 this section, the following statement must be contained in the
121 agreement under which the owner or person lawfully possessing
122 the property or equipment has relinquished its custody, or in an
123 addendum to that agreement, and the statement must be initialed
124 by the person hiring or leasing the rental property or
125 equipment:

126

127 Failure to return rental property or equipment upon
128 expiration of the rental period and failure to pay all
129 amounts due (including costs for damage to the
130 property or equipment) are evidence of abandonment or
131 refusal to redeliver the property, punishable in
132 accordance with section 812.155, Florida Statutes.

133 (7) THIRD PARTY POSSESSION.—Possession of personal property
134 or equipment by a third party does not alleviate the lessee of
135 his or her obligation to return the personal property or
136 equipment according to the terms stated in the contract by which
137 the property or equipment was leased or rented to the lessee,
138 and is not a defense against failure to return unless the lessee
139 provides the court or property owner with documentation that
140 demonstrates that the personal property or equipment was
141 obtained without the lessee's consent.

142 (8) REPORTING VEHICLE AS STOLEN.—A lessor of a vehicle that
143 is not returned at the conclusion of the lease who satisfies the
144 requirements of this section regarding the vehicle is entitled
145 to report the vehicle as stolen to a law enforcement agency and

Page 5 of 6

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

591-02369-12 20121276c1

146 have the vehicle listed as stolen on any local or national
147 registry of such vehicles.

148 Section 2. This act shall take effect July 1, 2012.

Page 6 of 6

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Failure to Return

Bill Number 1276
(if applicable)

Name Doug Bell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroec St.

Phone 222-3533

Street

Tall

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Avis Budget Group

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/21

Meeting Date

Topic _____

Bill Number 1276
(if applicable)

Name Leslie Dughi

Amendment Barcode _____
(if applicable)

Job Title Govt Affair

Address _____

Phone _____

Street

Tall, FL

City

State

Zip

E-mail dughi@gtlaw.com

Speaking: For Against Information

Representing Enterprise, National, Alamo Rent a Car

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
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 Judiciary Committee

BILL: CS/SB 1890

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Mortgage Foreclosure Proceedings

DATE: February 22, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.			BI	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill streamlines the foreclosure litigation process by requiring plaintiffs to research and gather relevant information to support a foreclosure action and file such information at the time of filing a foreclosure. The bill expands the duty of mortgage holders to timely provide estoppel statements which may assist the flow of real estate commerce in the state; requires a party who is seeking to enforce a lost, destroyed, or stolen negotiable instrument that is affiliated with a mortgage to provide adequate protection from claims of the rightful note holder; requires lenders to pursue deficiency judgments sooner rather than later for owner-occupied one-to-four family residences. The bill revises a number of laws affecting foreclosure in an attempt to remove disincentives to moving forward with a foreclosure action. The bill:

- Reduces the amount of time within which a lender may pursue a deficiency judgment against a borrower after a foreclosure sale.
- Expands the persons to whom a lender must provide an “estoppel statement” to include a holder of an interest in the mortgaged property. An “estoppel statement” provides information on the unpaid balance of a loan and other relevant information to expedite pay-off.

- Places in provisions of statute which deal with foreclosure, the procedures for a lender to establish a lost note.
- Limits the remedies available in an action to set aside a final judgment of foreclosure to monetary damages under certain circumstances involving negotiable instruments.
- Establishes a mechanism for courts to identify abandoned properties.
- Requires certain persons to execute instruments acknowledging the satisfaction of liens and judgments and to provide a certified copy of the recorded satisfaction to the person who made the full payment.
- Requires a person who receives full payment of a judgment lien to deliver a statement to the judgment debtor specifying that the lien has been satisfied and released.
- Specifies the required contents of a foreclosure complaint
- Revises procedures and expands the class of persons who seek an expedited foreclosure action.
- Revises procedures for a show cause why payments should not be ordered during the pendency of a foreclosure action to clarify that the second type of proceeding only applies to an action for a mortgage foreclosure on a property other than a homestead.

The bill creates the following sections of the Florida Statutes: 701.045, 702.015, 702.036, 702.11, 702.13, and two undesignated sections of Florida law.

This bill amends the following sections of the Florida Statutes: 95.11, 701.04, 702.06, and 702.10.

II. Present Situation:

Litigating a Foreclosure Action

Foreclosure is a remedy that a lender initiates when a borrower defaults or fails to make payments on his or her mortgage. The mortgage is a contract between the borrower and lender.¹ Foreclosure of a mortgage is a civil action in Florida that is filed in the county where the property is located.² Typically, the complaint alleges that the plaintiff, as holder of the note and mortgage, seeks to foreclose the mortgage and note on the identified parcel of real property. The plaintiff must serve the complaint on all parties affected by the action. A notice of *lis pendens* is recorded in the records of the county where the property is located to give notice to creditors and others whose interests may be affected by the pending foreclosure litigation. After a *lis pendens* is filed, any subsequently created lien may not be enforced against the property unless the holder of that lien intervenes in the foreclosure proceedings within 30 days.³

Litigating a foreclosure action is comparable to litigating any other civil action in Florida.⁴ Elements that are essential to pleading a foreclosure complaint include: the execution and date of delivery of the note and mortgage along with their recordation; attachment of the note and mortgage as exhibits to the complaint; a legal description of the property; an allegation that the

¹ See e.g., *Gulf Life Ins. Co. v. Pringle*, 216 So. 2d 468 (Fla. 2d DCA 1968), and *Guynn v. Brentmoore Farms, Inc.*, 253 So. 2d 136, 138 (Fla. 1st DCA 1971).

² *Georgia Casualty Co. v. O'Donnell*, 109 Fla. 290, 291, 147 So. 267, 268 (Fla. 1933).

³ Section 48.23(1)(d), F.S.

⁴ See Kendall Coffey, *Foreclosures in Florida: Remedies, Defenses and Liabilities* (second edition), s. 13.01 (2008).

mortgagee (lender) presently owns and holds the note and mortgage; identification of the person holding title to the property; identification of the person holding possession of the property; a description of the default, along with a statement of the amount of principal due and the date from which interest is due; a statement that the mortgage has been accelerated; and reference to the hiring of an attorney along with any attorney's fees and other costs for the suit.⁵

In Florida, the proper party to commence a foreclosure complaint is the holder of the note and mortgage.⁶ The Florida Supreme Court amended the Rules of Civil Procedure in 2010 to require verification of mortgage foreclosure complaints involving residential property.⁷ The Court also adopted a new form Affidavit of Diligent Search and Inquiry "to help standardize affidavits of diligent search and inquiry and provide information to the court regarding the methods used to attempt to locate and serve the defendant."⁸ After the complaint is filed and served on the borrower, and any other party affected by the foreclosure action such as junior lienholders, under the Florida Rules of Civil Procedure, the borrower has 20 days to serve an answer or respond with a motion.⁹ A foreclosure action that is based on defective service may be vacated years after the judgment is entered and the property sold.¹⁰

The usual rules for discovery and for scheduling the trial and trying the case also apply to foreclosure actions. The action proceeds just like any other civil action. Once the matter is litigated, the court may issue a final judgment of foreclosure that adjudges principal, interest, taxes, costs, and attorney's fees.¹¹ In an effort to accommodate the increased number of foreclosure filings and improve case processing, the Court adopted a Motion to Cancel and Reschedule Foreclosure Sale form that requires plaintiffs in a foreclosure to explain the reason for cancellation and request that the court reschedule the sale to provide better case management of foreclosure sales.¹² Under s. 45.031(1)(a), F.S., a judicial sale is scheduled following the order of judgment, and the sale is public.¹³ Documentary stamps must be paid on the sale.¹⁴ If no objections arise to the sale, the clerk issues a certificate of title to the purchaser. If the proceeds

⁵ *Id.* at s. 11.01 (discussing the use of Fla. R. Civ. P. Form 1.944, relating to mortgage foreclosure). See also Fla. R. Civ. P. 1.130(a), which requires all bonds, notes, bills of exchange, contracts, accounts, or documents upon which an action may be brought or defense made to be incorporated in or attached to the relevant pleading or complaint.

⁶ *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300, 300 (Fla. 1st DCA 1998), *rev. denied*, 727 So. 2d 910 (Fla. 1999), and *Philogene v. ABN Amro Mortgage Group, Inc.*, 948 So. 2d 45, 46 (Fla. 4th DCA 2006). Florida Rule of Civil Procedure 1.210(a) permits an action to be prosecuted in the name of the authorized person without joinder of the party for whose benefit the action is brought. See also *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183-84 (Fla. 3d DCA 1985), *rev. denied*, *S.E.L. Maduro, Inc. v. Kumar Corp.*, 476 So. 2d 675 (Fla. 1985).

⁷ See *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d 555, 556 (Fla. 2010). The amendments provide an incentive for the plaintiff in a foreclosure case to appropriately investigate and verify its ownership of the note and the right to enforce the note and ensure that the allegations in the complaint are accurate; conserve and prevent the wasting of judicial resources; and give trial courts greater authority to sanction plaintiffs who make false allegations. *Id.*

⁸ *Id.* at 556-57

⁹ Fla. R. Civ. P. 1.510(a).

¹⁰ See *Wagner v. Roberts*, 320 So. 2d 408 (Fla. 2d DCA 1975), *cert. denied*, 330 So. 2d 20 (Fla. 1976).

¹¹ See Fla. R. Civ. P. Form 1.996(a), Final Judgment of Foreclosure. See also *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d at 558 (the form was amended to add notice to lienholders and provide directions to property owners as to how to claim a right to funds remaining after public auction, and to allow the clerk of court to electronically conduct judicial sales).

¹² See Fla. R. Civ. P. Form 1.996(b), Motion to Cancel and Reschedule Foreclosure Sale. See also *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d at 557-58.

¹³ See *Heilman v. Suburban Coastal Corp.*, 506 So. 2d 1088 (Fla. 4th DCA 1987), *rev. denied*, 518 So. 2d 1275 (Fla. 1987).

¹⁴ Section 201.02(9), F.S. (the tax assessed is based on the highest and best bid at the foreclosure sale).

of the sale fall short of satisfying the judgment, the lender may file a post-foreclosure deficiency claim, and there is a 5-year statute of limitations on pursuing a legal action to enforce the claim.¹⁵

Fast-Track Foreclosure Procedure under s. 702.10, F.S.

Section 702.10, F.S., involves two types of proceedings.

Section 702.10(1), F.S.

The first proceeding is initiated in a hearing based on an order to show cause why the foreclosure judgment should not be entered at that hearing.¹⁶ The “order to show cause” hearing must be scheduled at least 20 days following service of the order or 30 days following service by publication. Any final judgment of foreclosure entered under s. 702.10(1), F.S., is for in rem relief¹⁷ only, but it does not preclude the entry of a deficiency judgment where otherwise allowed by law.

The judge must verify that the complaint filed pursuant to s. 702.10(1), F.S., states a cause of action. If the judge finds the complaint is verified, the judge must issue an order to the defendant to show cause why a final judgment should not be entered. If the defendant waives the right to be heard, the judge must promptly enter a final judgment of foreclosure.¹⁸ Attorney’s fees may be adjudged no greater than 3 percent of the principal amount owed in a foreclosure in which the defendant waives the right to be heard.¹⁹ If the defendant files any defenses by a motion, or by a verified or sworn answer at or before the hearing, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.²⁰

Section 702.10(2), F.S.

The second type of proceeding, under s. 702.10(2), F.S., specifies a procedure to be used for nonresidential real estate in an action for foreclosure. A defendant must show cause why an order to make payments to the mortgagee (lender) during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered. The order to show cause must detail the requirements of s. 702.10(2), F.S. The “order to show cause” hearing must be scheduled at least 20 days following service of the order or 30 days following service by publication. If service of process has already been made on the defendant, the order may be served in a manner provided in the Florida Rules of Civil Procedure. If the defendant waives the right to be heard on the order, the court may promptly enter an order requiring payment or an order to vacate.²¹ At the “order to show cause” hearing, the court may enter an order requiring the defendant to make payments in intervals pending the determination of the action based on the likelihood that the mortgagee will prevail in the foreclosure action.²² If the court enters an order requiring

¹⁵ Sections 702.06 and 95.11(2), F.S.

¹⁶ Section 702.10(1), F.S.

¹⁷ “An action in which the named defendant is real or personal property.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹⁸ Section 702.10(1)(d), F.S.

¹⁹ Section 702.10(1)(c), F.S.

²⁰ Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 31:7 (2007 edition).

²¹ Section 702.10(2)(c), F.S. *See also* s. 702.065(2), F.S., which provides for summary adjudication of attorney’s fees in mortgage foreclosure when a default is entered.

²² Section 702.10(2)(d) and (e), F.S.

payments, the order must also provide that the lender is entitled to possession of the premises if the defendant fails to make payment as required by the order unless the court finds good cause to order some other method of enforcement of the order.

Release of Mortgage Information

Chapter 701, F.S., allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days after a written request.²³ The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

Current law does not require the mortgagee to provide information relating to the mortgagor's loan to anyone other than the mortgagor of the encumbered property. However, persons who may have a legitimate interest in knowing the loan information include, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

Privacy Laws Related to the Release of Mortgage Information

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC ss. 6801-6809, addresses privacy requirements and disclosure or nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice disclosing the institution's privacy policy that complies with applicable federal law.²⁴ Under the Gramm-Leach-Bliley Act, states may enact laws to require financial institutions to disclose loan information to persons other than the mortgagor.²⁵

Pursuant to s. 655.059, F.S., the records of a financial institution²⁶ are confidential and are made available for inspection and examination only in specifically enumerated circumstances or to specifically listed individuals or entities. Under current law, if the mortgagee is a financial institution, the mortgagee may violate privacy laws and face penalties for releasing the mortgagor's mortgage information.

²³ Section 701.04, F.S.

²⁴ See 15 U.S.C.A. § 6803 which provides requirements for the disclosure of a financial institution's privacy policy.

²⁵ "[T]o comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law." 15 U.S.C. § 6802(e)(8).

²⁶ Section 55.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."

III. Effect of Proposed Changes:

Section 1. Limitation on Deficiency Claims Amends s. 95.11, F.S., to limit the right to enforce a claim of a deficiency judgment, following the foreclosure of an owner-occupied, one-family to four-family dwelling unit, to 1 year from 5 years.

Section 2. Applicability of Limitation on Deficiency Claims Creates an undesignated section of law. The section states that the amendments to s. 95.11, F.S., made by the bill which limit the right to enforce a claim of a deficiency judgment, following the foreclosure of an owner-occupied, one-family to four-family dwelling unit, to 1 year from 5 years, apply to any action commenced on or after July 1, 2012, regardless of when the cause of action accrues. Any action that would have been barred before the bill's changes to the statutes of limitations applicable to deficiency judgments may be commenced no later than 5 years after the action accrues and no later than July 1, 2014. If the action is not commenced by July 1, 2014, it is barred.

Section 3. Estoppel Statement Amends s. 701.04, F.S., to modify and update the current requirement for a lender to provide the mortgagor (borrower) with an estoppel statement setting forth the unpaid balance of a mortgage in order to facilitate sales and refinancing by expanding the parties who can request the estoppel statement to include others who hold an interest in the property (e.g., the purchaser upon foreclosure of a subordinate lien).²⁷

The estoppel letter must include the following detail:

- Unpaid amounts due as of the date specified in the request;
- A minimum of 20 days of per diem interest after that date;
- Certification that the party providing the estoppel statement is the holder of the original promissory note securing the property or is the entity entitled to enforce the note under s. 673.3011, F.S.; and
- A commitment that upon receipt of funds, the entity will return a recorded mortgage satisfaction and the original promissory note marked "paid in full" or a lost note affidavit and adequate protections as required by s. 702.11, F.S., which is created by the bill.

If the person or party executing the satisfaction is not shown as the owner of the mortgage in the official records, the satisfaction must be supplemented by an affidavit that the person executing the satisfaction is in physical possession of the original promissory note. If the party providing the estoppel statement was entitled only to enforce the note, but was not in possession of the note, the person must provide in the affidavit the specific factual basis for such authority.

The lender may not charge a fee for the preparation or delivery of the first two estoppel statements requested for any one mortgage in any calendar month. Subsequent owners of the property, creditors, and lienholders may rely on and enforce the estoppel statement.

²⁷ The lender has a separate obligation to provide certain information fee of charge to the borrower. Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 and the Federal Truth in Lending Act, 15 U.S.C. § 1641. The provision of such information is without restriction as to the number of requests. *Id.*

The payor of the mortgage may designate in writing where the original note should be returned. If the satisfaction of mortgage, the original promissory note, the lost note affidavit along with evidence of adequate protections are not delivered within 60 days, the party who received payment on the note or mortgage is subject to a penalty. The penalty is \$100 per day until the documents are delivered up to \$5,000.

Section 4. Cancellation of Liens and Judgments Creates s. 701.045, F.S., to provide requirements for liens other than a mortgage or judgment which are comparable to the requirements in section 3 of the bill when such liens are fully paid. The creditor or assignee to whom payment has been made must execute a written instrument acknowledging satisfaction of the lien or judgment, have the instrument acknowledged or proven and recorded in the official records in the proper county. Within 60 days after receipt of payment of the lien or judgment, the person required to acknowledge satisfaction must send a certified copy of the recorded satisfaction to the person who made the full payment. Whenever a writ of execution has been issued and the judgment upon which it was issued has been fully paid, the party receiving payment must request, in writing and addressed to the sheriff, return of the writ of execution as fully satisfied. Additionally, the party receiving payment of any judgment must comply with s. 55.206, relating to statements releasing a judgment lien.

Section 5. Elements of Complaint; Lost, Destroyed, or Stolen Note Affidavit Creates s. 702.015, F.S., to reschedule the timing of aspects of the foreclosure process, for such actions involving residential real property. The complaint must contain express allegations at the commencement of the proceeding that the plaintiff is the holder of the original note secured by the mortgage or allege with specificity the factual basis by which the plaintiff may enforce the note. The complaint must describe the authority of the plaintiff with specificity. The plaintiff must file the original promissory note with the court as a condition precedent to filing the complaint for foreclosure, certifying under penalty of perjury that the plaintiff is in physical possession of the original promissory note. The certification must set forth the physical location of the note, name and title of the individual giving the certification, the name of the person who personally verified physical possession, and the time and date on which possession was verified.

If the plaintiff seeks to enforce a lost, destroyed, or stolen instrument, an affidavit executed under penalty of perjury must be attached to the complaint. The affidavit must:

- Detail a clear chain of all assignments for the promissory note that is the subject of the action;
- Set forth all facts showing the plaintiff is entitled to enforce the note; and
- Include pertinent exhibits.

Section 6. Finality of Mortgage Foreclosure Judgment Creates s. 702.036, F.S., to provide for monetary damages or other appropriate relief in an action or proceeding in which a party seeks to set aside, invalidate, or challenge the validity of a final judgment of foreclosure of a mortgage, or to reestablish a lien or encumbrance on the property in abrogation of the final judgment of foreclosure of a mortgage. In such case, the court must treat the request for relief solely as a claim for monetary damages and may not grant relief that adversely affects the quality or character of the title to the property if the following circumstances exist:

- A final judgment of foreclosure of a mortgage has been entered as to a property;
- All applicable appeal periods have run as to the final judgment of foreclosure and an appeal has not been filed or, if an appeal has been filed, it has been finally resolved; and
- The party seeking relief from the final judgment of foreclosure has been properly served.

A person who is not a party to the foreclosure but who claims to be the actual holder of the promissory note secured by the foreclosed mortgage does not have a claim against the foreclosed property after it has been conveyed for valuable consideration to a person not affiliated with the foreclosed owner or the foreclosing lender.

The actual holder of the note is not precluded from pursuing recovery from any adequate protection given under s. 673.3091, F.S., by the person who enforced the note or from the party who wrongfully claimed to be the owner or holder of the promissory note or maker of the note or from any other person against whom the actual holder of the note may have a claim relating to the note.

Section 7. Deficiency Decrees Amends s. 702.06, F.S., to bar a party from pursuing a deficiency judgment if not commenced within 1 year after the sale date of mortgaged property pursuant to a court foreclosure sale or short sale. The amount of the deficiency judgment may not exceed the difference between the judgment amount or, in the case of a short sale, the outstanding debt and the fair market value of the property on the date of the sale. The amount of the deficiency judgment may be set off by the amount collected by the servicer or lender pursuant to any mortgage insurance held on the property purchased by the borrower.

With respect to an owner-occupied, one-family to four-family dwelling unit, the party to whom a deficiency is owing may move for the entry of a deficiency judgment in the foreclosure action or file a separate action for collection of the deficiency. If a separate action is pursued, it must be filed within 1 year after the property has vested in the foreclosing lender or purchaser at the foreclosure sale. The separate action must be filed within 1 year after the property has vested in the foreclosing lender or other purchaser at the foreclosure sale.

The complainant has the right to recover the deficiency unless the court in the foreclosure action has granted or denied a claim for a deficiency judgment. If a deficiency is not pursued within 1 year after the property has vested in the foreclosing lender or other purchaser at the foreclosure sale, the vesting of the property or proceeds of sale must be to be in full satisfaction of the judgment debt. Under these circumstances, the right to recover any deficiency is extinguished. The authority of the court to determine the entitlement to any assets held by a receiver or assignee of rents is not restricted.

Section 8. Order to Show cause hearings Amends s. 702.10, F.S., to revise the requirements for a fast-track mechanism to litigate mortgage foreclosure involving two types of proceedings.

Foreclosure on an Expedited Basis Under s. 702.10(1), F.S. by a Lienholder

The first type of proceeding involves an order to show cause why a final judgment should not be issued in a foreclosure case on an expedited basis.

Under the revised procedure, any lienholder, not just the senior mortgagee, may initiate the procedure. A “lienholder” includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or homeowners’ association, may file a lien against the real property subject to foreclosure.

Under the modified procedure, a filing of a request for review may be filed with the court in chambers and without a hearing. If the court finds the request for review is verified and complies with the requirements for a foreclosure complaint, the court must promptly issue an order directed to the other parties named in the foreclosure complaint to show cause why a final judgment of foreclosure should not be entered.

The order must set the date and time for a hearing on the order to show cause. The date of the hearing may not be sooner than 20 days after the service of the order. The hearing must be held within 90 days after the date of service. The order must:

- State that the filing of defenses by a motion, responsive pleading, affidavits, or other papers before the hearing to show cause may constitute cause for the court not to enter final judgment.
- State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.
- State that if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing will be used to consider and such evidence and argument as may be presented by the defendant.
- State that the court may enter an order of final judgment of foreclosure, which must be based on clear and convincing evidence and the arguments presented.
- State that if defendant fails to appear at the hearing to show cause or fails to file defenses or an answer not contesting the foreclosure, the defendant may be considered to have waived the right to a hearing, and the court may enter a default against the defendant, and if appropriate, a final judgment of foreclosure ordering the clerk to conduct a foreclosure sale.
- Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause. The form may contain blanks for the court to enter the amounts due.
- Require the party seeking final judgment to serve a copy of the order to show cause on the other parties as specified in the bill.

If a party has been served with the complaint and the original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure. If a defendant has not been served with the complaint or original process, the order to show cause, together with the summons and a copy of the complaint, must be served on the party in the same manner as the original process.

The modified “order to show cause” procedure may run simultaneously with other court procedures. If the court determines, based upon clear and convincing evidence and the arguments

presented, to support entry of a final judgment of foreclosure, the court must enter a final judgment of foreclosure ordering the clerk to conduct a foreclosure sale.

Order to Show Cause Payments During Pendency of Foreclosure Action Under s. 702.10(2), F.S.

The second type of proceeding is under s. 702.10(2), F.S., deals with the issuance of an order to show cause why payments should not be entered during the pendency of a foreclosure action.

Section 702.10(2), F.S., is amended to clarify that the second type of proceeding does not apply to an owner-occupied residence. Subsection 702.10(2), creates a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner-occupied residential property.

Forms for Order to Show Cause as Modified in the Bill The bill creates s. 702.10(3), F.S., and requests that the Florida Supreme Court amend the Florida Rules of Civil Procedure to provide for expedited foreclosure proceedings in conformity with the changes to s. 702.10, F.S. The bill also requests that the Court develop and publish forms for use under s. 702.10, F.S., as amended by the bill.

Section 9. Adequate Protections for Lost, Destroyed, or Stolen Notes in Mortgage Foreclosure Creates s 702.11, F.S., to codify the requirements for adequate protection outlined in s. 673.3091, F.S., relating to negotiable instruments, when a note is alleged to be lost, destroyed, or stolen in connection with proceedings for a mortgage foreclosure. Under s. 673.3091(2), F.S., in a foreclosure the court must ensure that the borrower required to pay the instrument is adequately protected against any loss that might occur if another person makes a claim to enforce the instrument. The court may find that the person required to pay the note securing the mortgage is adequately protected against a loss that may occur by reason of a claim by another person to enforce the mortgage if the person seeking to enforce the mortgage provides:

- A written indemnification agreement by a person reasonably believed sufficiently solvent to honor such obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of court; or
- Such other security as the court may deem appropriate under the circumstances.

Any person who wrongfully claimed to be the holder of or wrongfully claimed to be entitled to enforce a lost, stolen, or destroyed note and caused the mortgage secured by the note to be foreclosed is liable to the actual holder of the note for actual damages suffered, together with attorneys fees and costs of the actual holder of the note in his or her enforcing rights under this section. The extent of liability is not limited to any adequate protections given under s. 673.3091, F.S. The actual holder of the note may pursue any other claims or remedies it may have against the maker, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement of the note.

Section 10. Expedited Foreclosure of Abandoned Residential Real Property Creates

s. 702.13, F.S., to establish a procedure to determine whether residential real property is abandoned. Residential real property is deemed abandoned upon a showing that a duly licensed process server has made at least three attempts to locate an occupant of the residential real property. The process server must not be affiliated with the owner or servicer of any mortgage on the residential real property or with the attorney or law firm representing such owner or servicer. The attempts must be made at least 72 hours apart, and at least one each of such attempts must have been made before 12 p.m., between 12 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt must include physically knocking or ringing at the door of the residential real property and such other efforts as are sufficient to obtain a response from an occupant. Two or more of these conditions must exist:

- Windows or entrances to the premises are boarded up or closed off or multiple windowpanes are broken and unrepaired.
- Doors to the premises are smashed through, broken off, unhinged, or continuously unlocked.
- Rubbish, trash, or debris has accumulated on the mortgaged premises.
- The premises are deteriorating and are below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- If the premises are a part of a condominium or are governed by a mandatory homeowners' association, the manager or other representative of the association has confirmed that assessments for the unit or home are at least 90 days delinquent.
- Interviews with at least two neighbors in different households indicate that the residence has been abandoned. The neighbors must be adjoining, across the street in view of the home, or across the hall or adjacent to the unit in a condominium or cooperative.

The process server may provide, by affidavit and photographic or other documentation, evidence of the condition of the residential real property.

The party entitled to enforce the note and mortgage encumbering the real property appearing to be abandoned must file a petition before the court seeking to determine the status of the residential real property and to invoke an expedited foreclosure proceeding relating to the property. Upon the filing of an affidavit of diligent search and inquiry and the affidavit or documentary evidence of property abandonment, the court must, upon request of the petitioner, issue one or more subpoenas to the utility companies serving the residential real property commanding disclosure of the status of utility service and whether any utility payments have been made, and if so by whom. If, after review, the court determines that the property has been abandoned, the party entitled to enforce the note and mortgage encumbering the property shall be entitled to foreclose the mortgage using the expedited mortgage procedures set forth in s. 702.10, F.S., upon service by publication. Service must be made on any condominium, cooperative, or homeowners' associations having a lien interest in the property and all other junior lienholders as required by law.

Section 11. Remedial Nature of Legislation Creates an undesignated section of law, to provide that the bill is intended to be remedial in nature and applies to any action filed on or after the effective date of this act.

Section 12. Effective Date This act 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill streamlines the foreclosure litigation process, it may reduce costs associated with bring a foreclosure suit.

Entities that fail to meet the deadlines to provide estoppel statements will be subject to a penalty equal to \$100 per day until the documents are delivered up to a maximum of \$5,000.

C. Government Sector Impact:

The Office of the State Court Administrator indicates that the fiscal impact of this legislation cannot be accurately determined. The Office of the State Court Administrator reports that the shortened statute of limitation applicable to deficiency judgments may result in an increase in judicial workload for the first year, but anticipates that the workload will even out in future years.

VI. Technical Deficiencies:

In s. 702.13(1)(b) 5., F.S. as amended in the bill, a reference should be corrected from “unit” to “unit or parcel.”

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on February 20, 2012

The bill no longer:

- Designates the bill as the “Florida Fair Foreclosure Act.”
- Requires the foreclosing party in a mortgage foreclosure action to provide notice to the mortgagor and record title owners of the property and all tenants of a dwelling unit on the property if foreclosing the interest of the tenants.
- Includes provisions relating to foreclosing mortgages and liens on lands in more than one county.
- Provides that the amount of the deficiency judgment may be set off by the amount collected by the servicer or lender pursuant to any mortgage insurance held on the property purchased by the borrower.
- Revises the manner in which fees are adjudged reasonable in uncontested foreclosure cases.
- Requires at the time of serving the initial complaint, the plaintiff to give notice to the borrower or owner that he or she has a right to request a conciliation conference or mediation before the entry of final judgment in the case in order to facilitate a loan modification or settlement with the lender.
- Authorizes attorney fees and sanctions for raising unsupported claims or defenses or for causing an unreasonable delay in mortgage foreclosure actions.
- Prohibits the owner or landlord of property subject to the Florida Residential Landlord and Tenant Act that is in the foreclosure process from renting the property without giving full notice and disclosure to the tenants or prospective tenants that the property is in the legal process of foreclosure.
- Requires the plaintiff in a mortgage foreclosure action to file, contemporaneously with the filing of the initial complaint for foreclosure, the necessary documents to support an entry of summary judgment.

Additionally, the committee substitute revises the requirements for an order to show cause why a final judgment should not be issued in a foreclosure case on an expedited basis. The bill revises the requirements for an order to show cause why payments should not be entered during the pendency of a foreclosure action. The bill modifies provisions to expedite foreclosure of abandoned residential real property to add two additional conditions that a court may consider in determining whether a property is abandoned.

- B. **Amendments:**

None.



696168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (2) and subsection
(5) of section 95.11, Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real
property.—Actions other than for recovery of real property shall
be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation,
or liability founded on a written instrument, except for an
action to enforce a claim against a payment bond, which shall be



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14 governed by the applicable provisions of ss. 255.05(10) and
15 713.23(1)(e), and except for an action for a deficiency
16 judgment, which shall be governed by paragraph (5)(h) and s.
17 702.06.

18 (5) WITHIN ONE YEAR.—

19 (a) An action for specific performance of a contract.

20 (b) An action to enforce an equitable lien arising from the
21 furnishing of labor, services, or material for the improvement
22 of real property.

23 (c) An action to enforce rights under the Uniform
24 Commercial Code—Letters of Credit, chapter 675.

25 (d) An action against any guaranty association and its
26 insured, with the period running from the date of the deadline
27 for filing claims in the order of liquidation.

28 (e) An action to enforce any claim against a payment bond
29 on which the principal is a contractor, subcontractor, or sub-
30 subcontractor as defined in s. 713.01, for private work as well
31 as public work, from the last furnishing of labor, services, or
32 materials or from the last furnishing of labor, services, or
33 materials by the contractor if the contractor is the principal
34 on a bond on the same construction project, whichever is later.

35 (f) Except for actions described in subsection (8), a
36 petition for extraordinary writ, other than a petition
37 challenging a criminal conviction, filed by or on behalf of a
38 prisoner as defined in s. 57.085.

39 (g) Except for actions described in subsection (8), an
40 action brought by or on behalf of a prisoner, as defined in s.
41 57.085, relating to the conditions of the prisoner's
42 confinement.



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43 (h) An action under s. 702.06, to collect a deficiency
44 following the foreclosure of an owner-occupied, one-family to
45 four-family dwelling unit.

46 Section 2. The amendments to s. 95.11, Florida Statutes,
47 made by this act shall apply to any action commenced on or after
48 July 1, 2012, regardless of when the cause of action accrues,
49 except that any action that would not have been barred under s.
50 95.11(2) (b), Florida Statutes, before the changes made by this
51 act may be commenced no later than 5 years after the action
52 accrues and in no event later than July 1, 2014, and if the
53 action is not commenced by that date, it is barred by the
54 changes made by this act.

55 Section 3. Section 701.04, Florida Statutes, is amended to
56 read:

57 701.04 Cancellation of mortgages, liens, and judgments.—

58 (1) (a) If a mortgagor, a holder of an interest in property
59 encumbered by a mortgage, or a designee of either makes a
60 written request for the payoff amount of the mortgage as of a
61 certain date, the holder of the mortgage shall provide a written
62 estoppel statement executed by an officer or authorized agent of
63 the holder of the mortgage to the person making the request
64 within 15 days after the date the request was received. The
65 estoppel statement shall be delivered to the place, facsimile
66 number, or e-mail address designated in the written request. The
67 estoppel statement shall set ~~Within 14 days after receipt of the~~
68 ~~written request of a mortgagor, the holder of a mortgage shall~~
69 ~~deliver to the mortgagor at a place designated in the written~~
70 ~~request an estoppel letter setting forth:~~

71 1. The unpaid balance of the loan secured by the mortgage,



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72 including principal, all accrued interest, and any other charges
73 properly due under or secured by the mortgage as of the date
74 specified in the request. ~~and~~

75 2. Interest on a per-day basis for the unpaid balance for a
76 period of at least 20 days after the date specified in the
77 request.

78 3. A certification that the party providing the estoppel
79 statement is the holder of the original promissory note secured
80 thereby, or is the person or agent of the person entitled to
81 enforce the note pursuant to s. 673.3011.

82 4. A commitment to comply with paragraph (d) upon timely
83 receipt of the amounts set forth in the estoppel statement.

84 (b) The mortgagee may not charge a fee for the preparation
85 or delivery of the first two estoppel statements requested for
86 any one mortgage in any calendar month. This paragraph is not
87 intended to limit requirements of federal law.

88 (c) Subsequent owners of the property encumbered by the
89 mortgage, and creditors and lienholders taking an interest in
90 the property for a valuable consideration, and those claiming
91 by, through, and under them, may rely on the estoppel statement
92 and are entitled to the benefits of the statement.

93 (d) Whenever the amount of money due on a ~~any~~ mortgage,
94 ~~lien, or judgment is~~ shall be fully paid to the person or party
95 entitled to ~~the~~ payment ~~thereof~~, or all obligations secured by
96 the mortgage or lien are otherwise satisfied, the mortgagee,
97 ~~creditor, or assignee, or the attorney of record in the case of~~
98 ~~a judgment,~~ to whom such payment has ~~shall have~~ been made or
99 satisfaction has been given, shall execute in writing an
100 instrument acknowledging satisfaction of the ~~said~~ mortgage.



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101 ~~lien, or judgment~~ and have the same acknowledged, or proven, and
102 recorded duly entered of record in the official records book
103 provided by law for such purposes in the proper county. If the
104 person or party executing the satisfaction is not shown as the
105 owner of the mortgage in the official records, the instrument
106 shall be supplemented by an affidavit that the person executing
107 the satisfaction is in physical possession of the original
108 promissory note secured by the mortgage or was entitled to
109 enforce the note pursuant to s. 673.3011. If the person was
110 entitled only to enforce the note, but was not in possession of
111 the note, the person shall provide in the affidavit the specific
112 factual basis for such authority.

113 (e) If the written request for the payoff amount for the
114 mortgage as of a certain date is not from the mortgagor or the
115 designee of the mortgagor, the request must include a copy of
116 the instrument or instruments showing the requestor's ownership
117 interest in the property. The mortgageholder, in response to the
118 request, is not required to itemize the unpaid balance of the
119 loan secured by the mortgage.

120 (2) (a) Within 60 days after ~~of~~ the date of receipt of the
121 full payment of the mortgage in accord with the estoppel
122 statement, ~~lien, or judgment~~, the person required to acknowledge
123 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or
124 cause to be sent ~~the recorded satisfaction~~ to the maker of the
125 promissory note, or such other person as may be designated in
126 writing by the payor at or after the final payment, a certified
127 copy of the recorded satisfaction. The person shall also send to
128 the payor of a mortgage note:

129 1. The original promissory note, marked "paid in full"; or



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130 2. An affidavit stating that the note was lost, destroyed,
131 or stolen, together with exhibits in compliance with s. 702.015
132 and evidence of adequate protections as provided in s. 702.11.

133 (b) If the documents required by this subsection are not
134 delivered within 60 days, the party who received payment on the
135 note or mortgage shall pay to the maker of the promissory note
136 or its designee a fee in the amount of \$100 per day for each day
137 beyond 60 days that the documents have not been delivered. The
138 aggregate fees under this paragraph may not exceed \$5,000.

139 (3) A summary procedure pursuant to s. 51.011 may be
140 brought to compel compliance with the requirements of this
141 section, and the prevailing party shall recover reasonable
142 attorney fees and costs. The court may limit recovery of
143 attorney fees and costs if an unreasonable number of requests
144 for estoppel statements have been made ~~person who has made the~~
145 full payment. In the case of a civil action arising out of the
146 provisions of this section, the prevailing party shall be
147 entitled to attorney's fees and costs.

148 (4) ~~(2)~~ Whenever a writ of execution has been issued,
149 docketed, and indexed with a sheriff and the judgment upon which
150 it was issued has been fully paid, it shall be the
151 responsibility of the party receiving payment to request, in
152 writing, addressed to the sheriff, return of the writ of
153 execution as fully satisfied.

154 Section 4. Section 701.045, Florida Statutes, is created to
155 read:

156 701.045 Cancellation of liens and judgments.—

157 (1) If the amount of money due on any lien, other than a
158 mortgage, or any judgment is fully paid to the party entitled to



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159 such payment or to the creditor or assignee, the party, the
160 creditor, or the assignee to whom such payment has been made
161 shall execute in writing an instrument acknowledging
162 satisfaction of the lien or judgment, have the instrument
163 acknowledged or proven, and have the instrument duly entered of
164 record in the official records in the appropriate county. Within
165 60 days after the date of receipt of the full payment of the
166 lien or judgment, the party required to acknowledge satisfaction
167 of the lien or judgment shall send or cause to be sent the
168 recorded satisfaction instrument to the party who has made the
169 full payment. In the case of a civil action arising out of this
170 section, the prevailing party is entitled to attorney fees and
171 costs.

172 (2) If a writ of execution has been issued, docketed, and
173 indexed with a sheriff and the judgment upon which it was issued
174 has been fully paid, the party receiving payment must request,
175 in writing and addressed to the sheriff, return of the writ of
176 execution as fully satisfied.

177 (3) The party receiving full payment of any judgment shall
178 also comply with s. 55.206, as appropriate.

179 Section 5. Section 702.015, Florida Statutes, is created to
180 read:

181 702.015 Elements of complaint; lost, destroyed, or stolen
182 note affidavit.-

183 (1) A complaint that seeks to foreclose a mortgage or other
184 lien on residential real property, including individual units of
185 condominiums and cooperatives, designed principally for
186 occupation by from one to four families, but not including an
187 interest in a timeshare property, which secures a promissory



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188 note must:

189 (a) Contain affirmative allegations expressly made by the
190 plaintiff at the time the proceeding is commenced that the
191 plaintiff is the holder of the original note secured by the
192 mortgage; or

193 (b) Allege with specificity the factual basis by which the
194 plaintiff is a person entitled to enforce the note under s.
195 673.3011.

196 (2) If a party has been delegated the authority to
197 institute a mortgage foreclosure action on behalf of the holder
198 of the note, the complaint shall describe the authority of the
199 plaintiff and identify, with specificity, the document that
200 grants the plaintiff the authority to act on behalf of the
201 holder of the note. This subsection is intended to require
202 initial disclosure of status and pertinent facts and not to
203 modify law regarding standing or real parties in interest.

204 (3) If the plaintiff is in physical possession of the
205 original promissory note, the plaintiff must file with the
206 court, contemporaneously with and as a condition precedent to
207 the filing of the complaint for foreclosure, certification,
208 under penalty of perjury, that the plaintiff is in physical
209 possession of the original promissory note. The certification
210 must set forth the physical location of the note, the name and
211 title of the individual giving the certification, the name of
212 the person who personally verified such physical possession, and
213 the time and date on which the possession was verified. Correct
214 copies of the note and all allonges to the note must be attached
215 to the certification. The original note and the allonges must be
216 filed with the court before the entry of any judgment of



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217 foreclosure or judgment on the note.

218 (4) If the plaintiff seeks to enforce a lost, destroyed, or
219 stolen instrument, an affidavit executed under penalty of
220 perjury must be attached to the complaint. The affidavit must:

221 (a) Detail a clear chain of all assignments for the
222 promissory note that is the subject of the action.

223 (b) Set forth facts showing that the plaintiff is entitled
224 to enforce a lost, destroyed, or stolen instrument pursuant to
225 s. 673.3091.

226 (c) Include as exhibits to the affidavit such copies of the
227 note and the allonges to the note, assignments of mortgage,
228 audit reports showing physical receipt of the original note, or
229 other evidence of the acquisition, ownership, and possession of
230 the note as may be available to the plaintiff.

231 Section 6. Section 702.036, Florida Statutes, is created to
232 read:

233 702.036 Finality of mortgage foreclosure judgment.-

234 (1) (a) In an action or proceeding in which a party seeks to
235 set aside, invalidate, or challenge the validity of a final
236 judgment of foreclosure of a mortgage or to establish or
237 reestablish a lien or encumbrance on the property in abrogation
238 of the final judgment of foreclosure of a mortgage, the court
239 shall treat such request solely as a claim for monetary damages
240 and may not grant relief that adversely affects the quality or
241 character of the title to the property if:

242 1. A final judgment of foreclosure of a mortgage has been
243 entered as to a property;

244 2. All applicable appeals periods have run as to the final
245 judgment of foreclosure of a mortgage and an appeal has not been



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246 filed or, if an appeal has been filed, it has been finally
247 resolved;

248 3. The property has been acquired for value by a person not
249 affiliated with the foreclosing lender or the foreclosed owner,
250 at a time in which no lis pendens regarding the suit to set
251 aside, invalidate, or challenge the foreclosure appears in the
252 official records of the county where the property is located;
253 and

254 4. The party seeking relief from the final judgment of
255 foreclosure of a mortgage has been properly served in the
256 foreclosure lawsuit as provided in chapter 48 or chapter 49.

257 (b) This subsection does not limit the right to pursue any
258 other relief to which a person may be entitled, including, but
259 not limited to, compensatory damages, punitive damages,
260 statutory damages, consequential damages, injunctive relief, or
261 fees and costs, and which does not adversely affect the
262 ownership of the title to the property as vested in the
263 unaffiliated purchaser for value.

264 (2) For purposes of this section, the following, without
265 limitation, shall be considered persons affiliated with the
266 foreclosing lender:

267 (a) The foreclosing lender or any loan servicer for the
268 loan being foreclosed;

269 (b) Any past or present owner or holder of the loan being
270 foreclosed;

271 (c) Any maintenance company, holding company, foreclosure
272 services company, or law firm under contract to any entity
273 listed in paragraph (a), paragraph (b), or this paragraph, with
274 regard to the loan being foreclosed; or



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275 (d) Any parent entity, subsidiary, or other person that
276 directly, or indirectly through one or more intermediaries,
277 controls or is controlled by, or is under common control with,
278 any entity listed in paragraph (a), paragraph (b), or paragraph
279 (c).

280 (3) After foreclosure of a mortgage based upon the
281 enforcement of a lost, destroyed, or stolen note, a person who
282 is not a party to the underlying foreclosure action but who
283 claims to be the actual holder of the promissory note secured by
284 the foreclosed mortgage does not have a claim against the
285 foreclosed property after it has been conveyed for valuable
286 consideration to a person not affiliated with the foreclosing
287 lender or the foreclosed owner. This section does not preclude
288 the actual holder of the note from pursuing recovery from any
289 adequate protection given under s. 673.3091 by the person who
290 enforced the note or from the party who wrongfully claimed to be
291 the owner or holder of the promissory note or the maker of the
292 note or from any other person against whom the actual holder of
293 the note may have a claim relating to the note.

294 Section 7. Section 702.06, Florida Statutes, is amended to
295 read:

296 702.06 Deficiency decree; ~~common-law~~ suit to recover
297 deficiency.-

298 (1) In an action ~~all suits~~ for the foreclosure of a
299 mortgage, ~~mortgages heretofore or hereafter executed~~ the entry
300 of a deficiency decree for any portion of a deficiency, should
301 one exist, ~~must shall~~ be commenced within 1 year after the sale
302 date of the mortgaged property pursuant to a court foreclosure
303 sale or short sale. If not commenced within 1 year after sale,



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304 any attempt to collect a deficiency judgment shall be barred.
305 The amount of the deficiency judgment may not exceed the
306 difference between the judgment amount or, in the case of a
307 short sale, the outstanding debt, and the fair market value of
308 the property on the date of sale. ~~the sound judicial discretion~~
309 ~~of the court, but~~ The complainant shall also have the right to
310 sue at common law to recover such deficiency, unless the court
311 in the foreclosure action has granted or denied a claim for a
312 deficiency judgment ~~provided no suit at law to recover such~~
313 ~~deficiency shall be maintained against the original mortgagor in~~
314 ~~eases where the mortgage is for the purchase price of the~~
315 ~~property involved and where the original mortgagee becomes the~~
316 ~~purchaser thereof at foreclosure sale and also is granted a~~
317 ~~deficiency decree against the original mortgagor.~~

318 (2) (a) With respect to an owner-occupied, one-family to
319 four-family dwelling unit, the party to whom a deficiency is
320 owing may move for the entry of a deficiency judgment in the
321 foreclosure action or file a separate action for collection of
322 the deficiency. The separate action must be filed within 1 year
323 after the property has vested in the foreclosing lender or other
324 purchaser at the foreclosure sale.

325 (b) If a deficiency is not pursued within the time period
326 specified in this subsection, the vesting of the property or
327 proceeds of the sale, regardless of the amount, shall be deemed
328 to be in full satisfaction of the judgment debt and a right to
329 recover any deficiency in any subsequent action or proceeding is
330 extinguished.

331 (c) This subsection does not restrict the authority of the
332 court to determine the entitlement to any assets held by any



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333 receiver or any assignee of the rents and profits of the
334 property.

335 Section 8. Section 702.10, Florida Statutes, is amended to
336 read:

337 702.10 Order to show cause; entry of final judgment of
338 foreclosure; payment during foreclosure.—

339 (1) A lienholder ~~After a complaint in a foreclosure~~
340 ~~proceeding has been filed, the mortgagee~~ may request an order to
341 show cause for the entry of final judgment in a foreclosure
342 action. For purposes of this section, the term "lienholder"
343 includes the plaintiff and a defendant to the action who holds a
344 lien encumbering the property or a defendant who, by virtue of
345 its status as a condominium association, cooperative
346 association, or homeowners' association, may file a lien against
347 the real property subject to foreclosure. Upon filing, and the
348 court shall immediately review the request and the court file in
349 chambers and without a hearing ~~complaint~~. If, upon examination
350 of the court file ~~complaint~~, the court finds that the complaint
351 is verified, complies with s. 702.015, and alleges a cause of
352 action to foreclose on real property, the court shall promptly
353 issue an order directed to the other parties named in the action
354 ~~defendant~~ to show cause why a final judgment of foreclosure
355 should not be entered.

356 (a) The order shall:

357 1. Set the date and time for a hearing on the order to show
358 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner
359 than 20 days after the service of the order. ~~When service is~~
360 ~~obtained by publication, the date for the hearing may not be set~~
361 ~~sooner than 30 days after the first publication.~~ The hearing



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362 must be held within 90 ~~60~~ days after the date of service.
363 Failure to hold the hearing within such time does not affect the
364 validity of the order to show cause or the jurisdiction of the
365 court to issue subsequent orders.

366 2. Direct the time within which service of the order to
367 show cause and the complaint must be made upon the defendant.

368 3. State that the filing of defenses by a motion,
369 responsive pleading, affidavits, or other papers ~~or by a~~
370 ~~verified or sworn answer at or~~ before the hearing to show cause
371 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
372 ~~attached~~ final judgment.

373 4. State that a ~~the~~ defendant has the right to file
374 affidavits or other papers before ~~at~~ the time of the hearing to
375 show cause and may appear personally or by way of an attorney at
376 the hearing.

377 5. State that, if a ~~the~~ defendant files defenses by a
378 motion, a verified or sworn answer, affidavits, or other papers
379 or appears personally or by way of an attorney at the time of
380 the hearing, the hearing time will ~~may~~ be used to hear and
381 consider the defendant's motion, answer, affidavits, other
382 papers, and other evidence and argument as may be presented by
383 the defendant or the defendant's attorney. The order shall also
384 state that the court may enter an order of final judgment of
385 foreclosure, which must be based on clear and convincing
386 evidence and the arguments presented. If such an order is
387 entered, the court shall enter a final judgment of foreclosure
388 ordering the clerk of the court to conduct a foreclosure sale.

389 6. State that, if a ~~the~~ defendant fails to appear at the
390 hearing to show cause or fails to file defenses by a motion or



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391 by a verified or sworn answer or files an answer not contesting
392 the foreclosure, such ~~the~~ defendant may be considered to have
393 waived the right to a hearing, and in such case, the court may
394 enter a default against such defendant and, if appropriate, a
395 final judgment of foreclosure ordering the clerk of the court to
396 conduct a foreclosure sale.

397 7. State that if the mortgage provides for reasonable
398 attorney attorney's fees and the requested attorney attorney's
399 fees do not exceed 3 percent of the principal amount owed at the
400 time of filing the complaint, it is unnecessary for the court to
401 hold a hearing or adjudge the requested attorney attorney's fees
402 to be reasonable.

403 8. Attach the form of the proposed final judgment of
404 foreclosure which the movant requests the court to will enter, ~~if the defendant waives the right to be heard~~
405 ~~at the hearing on~~ the order to show cause. The form may contain blanks for the
406 court to enter the amounts due.

408 9. Require the party seeking final judgment mortgagee to
409 serve a copy of the order to show cause on the other parties the
410 ~~mortgager~~ in the following manner:

411 a. If a party the mortgager has been served with the
412 complaint and original process, or the other party is the
413 plaintiff in the action, service of the order to show cause on
414 that party order may be made in the manner provided in the
415 Florida Rules of Civil Procedure.

416 b. If a defendant the mortgager has not been served with
417 the complaint and original process, the order to show cause,
418 together with the summons and a copy of the complaint, shall be
419 served on the party mortgager in the same manner as provided by



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420 law for original process.

421

422 Any final judgment of foreclosure entered under this subsection
423 is for in rem relief only. ~~Nothing in~~ This subsection does not
424 ~~shall~~ preclude the entry of a deficiency judgment where
425 otherwise allowed by law. It is the intent of the Legislature
426 that this alternative procedure may run simultaneously with
427 other court procedures.

428 (b) The right to be heard at the hearing to show cause is
429 waived if a ~~the~~ defendant, after being served as provided by law
430 with an order to show cause, engages in conduct that clearly
431 shows that the defendant has relinquished the right to be heard
432 on that order. The defendant's failure to file defenses by a
433 motion or by a sworn or verified answer, affidavits, or other
434 papers or to appear personally or by way of an attorney at the
435 hearing duly scheduled on the order to show cause presumptively
436 constitutes conduct that clearly shows that the defendant has
437 relinquished the right to be heard. If a defendant files
438 defenses by a motion, ~~or by~~ a verified or sworn answer,
439 affidavits, or other papers at or before the hearing, such
440 action may constitute ~~constitutes~~ cause and may preclude
441 ~~precludes~~ the entry of a final judgment at the hearing to show
442 cause.

443 (c) In a mortgage foreclosure proceeding, when a final
444 ~~default~~ judgment of foreclosure has been entered against the
445 mortgagor and the note or mortgage provides for the award of
446 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
447 court to hold a hearing or adjudge the requested attorney
448 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3



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449 percent of the principal amount owed on the note or mortgage at
450 the time of filing, even if the note or mortgage does not
451 specify the percentage of the original amount that would be paid
452 as liquidated damages.

453 (d) If the court finds that all defendants have ~~the~~
454 ~~defendant has~~ waived the right to be heard as provided in
455 paragraph (b), the court shall promptly enter a final judgment
456 of foreclosure without the need for further hearing if the
457 plaintiff has shown entitlement to a final judgment. If the
458 court finds that a ~~the~~ defendant has not waived the right to be
459 heard on the order to show cause, the court shall ~~then~~ determine
460 whether there is cause not to enter a final judgment of
461 foreclosure. If the court determines, based upon clear and
462 convincing evidence and the arguments presented, to support
463 entry of a final judgment of foreclosure, the court shall enter
464 a final judgment of foreclosure ordering the clerk of the court
465 to conduct a foreclosure sale ~~finds that the defendant has not~~
466 ~~shown cause, the court shall promptly enter a judgment of~~
467 ~~foreclosure~~. If the time allotted for the hearing is
468 insufficient, the court may announce at the hearing a date and
469 time for the continued hearing. Only the parties who appear,
470 individually or through an attorney, at the initial hearing must
471 be notified of the date and time of the continued hearing.

472 (2) This subsection does not apply to foreclosure of an
473 owner-occupied residence. As part of any other ~~In an~~ action for
474 foreclosure, and in addition to any other relief that the court
475 may award ~~other than residential real estate, the plaintiff the~~
476 ~~mortgagee~~ may request that the court enter an order directing
477 the mortgagor defendant to show cause why an order to make



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478 payments during the pendency of the foreclosure proceedings or
479 an order to vacate the premises should not be entered.

480 (a) The order shall:

481 1. Set the date and time for hearing on the order to show
482 cause. However, the date for the hearing may ~~shall~~ not be set
483 sooner than 20 days after the service of the order. If ~~Where~~
484 service is obtained by publication, the date for the hearing may
485 ~~shall~~ not be set sooner than 30 days after the first
486 publication.

487 2. Direct the time within which service of the order to
488 show cause and the complaint shall be made upon each ~~the~~
489 defendant.

490 3. State that a ~~the~~ defendant has the right to file
491 affidavits or other papers at the time of the hearing and may
492 appear personally or by way of an attorney at the hearing.

493 4. State that, if a ~~the~~ defendant fails to appear at the
494 hearing to show cause and fails to file defenses by a motion or
495 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
496 have waived the right to a hearing and in such case the court
497 may enter an order to make payment or vacate the premises.

498 5. Require the movant ~~mortgagee~~ to serve a copy of the
499 order to show cause on the defendant ~~mortgagor~~ in the following
500 manner:

501 a. If a defendant ~~the mortgagor~~ has been served with the
502 complaint and original process, service of the order may be made
503 in the manner provided in the Florida Rules of Civil Procedure.

504 b. If a defendant ~~the mortgagor~~ has not been served with
505 the complaint and original process, the order to show cause,
506 together with the summons and a copy of the complaint, shall be



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507 served on the defendant mortgagor in the same manner as provided
508 by law for original process.

509 (b) The right of a defendant to be heard at the hearing to
510 show cause is waived if the defendant, after being served as
511 provided by law with an order to show cause, engages in conduct
512 that clearly shows that the defendant has relinquished the right
513 to be heard on that order. A ~~The~~ defendant's failure to file
514 defenses by a motion or by a sworn or verified answer or to
515 appear at the hearing duly scheduled on the order to show cause
516 presumptively constitutes conduct that clearly shows that the
517 defendant has relinquished the right to be heard.

518 (c) If the court finds that a ~~the~~ defendant has waived the
519 right to be heard as provided in paragraph (b), the court may
520 promptly enter an order requiring payment in the amount provided
521 in paragraph (f) or an order to vacate.

522 (d) If the court finds that the mortgagor has not waived
523 the right to be heard on the order to show cause, the court
524 shall, at the hearing on the order to show cause, consider the
525 affidavits and other showings made by the parties appearing and
526 make a determination of the probable validity of the underlying
527 claim alleged against the mortgagor and the mortgagor's
528 defenses. If the court determines that the plaintiff mortgagee
529 is likely to prevail in the foreclosure action, the court shall
530 enter an order requiring the mortgagor to make the payment
531 described in paragraph (e) to the plaintiff mortgagee and
532 provide for a remedy as described in paragraph (f). However, the
533 order shall be stayed pending final adjudication of the claims
534 of the parties if the mortgagor files with the court a written
535 undertaking executed by a surety approved by the court in an



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536 amount equal to the unpaid balance of the lien being foreclosed
537 ~~the mortgage on the property~~, including all principal, interest,
538 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
539 ~~mortgagee~~.

540 (e) ~~If In the event~~ the court enters an order requiring the
541 mortgagor to make payments to the plaintiff mortgagee, payments
542 shall be payable at such intervals and in such amounts provided
543 for in the mortgage instrument before acceleration or maturity.
544 The obligation to make payments pursuant to any order entered
545 under this subsection shall commence from the date of the motion
546 filed under this section hereunder. The order shall be served
547 upon the mortgagor no later than 20 days before the date
548 specified for the first payment. The order may permit, but may
549 ~~shall~~ not require, the plaintiff mortgagee to take all
550 appropriate steps to secure the premises during the pendency of
551 the foreclosure action.

552 (f) ~~If In the event~~ the court enters an order requiring
553 payments, the order shall also provide that the plaintiff is
554 ~~mortgagee shall be~~ entitled to possession of the premises upon
555 the failure of the mortgagor to make the payment required in the
556 order unless at the hearing on the order to show cause the court
557 finds good cause to order some other method of enforcement of
558 its order.

559 (g) All amounts paid pursuant to this section shall be
560 credited against the mortgage obligation in accordance with the
561 terms of the loan documents; ~~provided, however, that any~~
562 payments made under this section do shall not constitute a cure
563 of any default or a waiver or any other defense to the mortgage
564 foreclosure action.



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565 (h) Upon the filing of an affidavit with the clerk that the
566 premises have not been vacated pursuant to the court order, the
567 clerk shall issue to the sheriff a writ for possession which
568 shall be governed by the provisions of s. 83.62.

569 (i) For purposes of this subsection, there is a rebuttable
570 presumption that a residential property for which a homestead
571 exemption for taxation was granted according to the certified
572 rolls of the latest assessment by the county property appraiser,
573 before the filing of the foreclosure action, is an owner-
574 occupied residential property.

575 (3) The Supreme Court is requested to amend the Florida
576 Rules of Civil Procedure to provide for expedited foreclosure
577 proceedings in conformity with this section. The Supreme Court
578 is requested to develop and publish forms for use under this
579 section.

580 Section 9. Section 702.11, Florida Statutes, is created to
581 read:

582 702.11 Adequate protections for lost, destroyed, or stolen
583 notes in mortgage foreclosure.-

584 (1) In connection with a mortgage foreclosure, the court
585 may find any of the following as reasonable means of providing
586 adequate protection under s. 673.3019:

587 (a) A written indemnification agreement by a person
588 reasonably believed sufficiently solvent to honor such an
589 obligation;

590 (b) A surety bond;

591 (c) A letter of credit issued by a financial institution;

592 (d) A deposit of cash collateral with the clerk of the
593 court; or



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594 (e) Such other security as the court may deem appropriate
595 under the circumstances.

596
597 Any security given shall be on terms and in amounts set by the
598 court, for a time period through the running of the statute of
599 limitations for enforcement of the underlying note, and
600 conditioned to indemnify and hold harmless the maker of the note
601 against any loss or damage, including principal, interest, and
602 attorney fees and costs, which might occur by reason of a claim
603 by another person to enforce the note.

604 (2) Any person who wrongly claimed to be the holder of or,
605 pursuant to s. 673.3011, wrongly claimed to be entitled to
606 enforce a lost, stolen, or destroyed note and caused the
607 mortgage secured by the note to be foreclosed is liable to the
608 actual holder of the note for actual damages suffered, together
609 with attorney fees and costs of the actual holder of the note in
610 enforcing rights under this section. The extent of the liability
611 is not limited to any adequate protections given under s.
612 673.3091. In addition, the actual holder of the note may pursue
613 recovery directly against any adequate protections given.

614 (a) The actual holder of the note is not required to pursue
615 recovery against the maker of the note or any guarantor of the
616 note as a condition precedent to pursuing remedies under this
617 section.

618 (b) This section does not limit or restrict the ability of
619 the actual holder of the note to pursue any other claims or
620 remedies it may have against the maker, the person who wrongly
621 claimed to be the holder, or any person who facilitated or
622 participated in the claim to the note or enforcement of the



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623 note.

624 Section 10. Section 702.13, Florida Statutes, is created to
625 read:

626 702.13 Expedited foreclosure of abandoned residential real
627 property.-

628 (1) As used in this section, the term "abandoned
629 residential real property" means residential real property that
630 is deemed abandoned upon a showing that:

631 (a) A duly licensed process server unaffiliated with the
632 owner or servicer of any mortgage on the residential real
633 property or with the attorney or law firm representing such
634 owner or servicer has made at least three attempts to locate an
635 occupant of the residential real property. The attempts must
636 have been made at least 72 hours apart, and at least one each of
637 such attempts must have been made before 12 p.m., between 12
638 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
639 must include physically knocking or ringing at the door of the
640 residential real property and such other efforts as are normally
641 sufficient to obtain a response from an occupant.

642 (b) Two or more of the following conditions exist:

643 1. Windows or entrances to the premises are boarded up or
644 closed off or multiple window panes are broken and unrepaired.

645 2. Doors to the premises are smashed through, broken off,
646 unhinged, or continuously unlocked.

647 3. Rubbish, trash, or debris has accumulated on the
648 mortgaged premises.

649 4. The premises are deteriorating and are below or in
650 imminent danger of falling below minimum community standards for
651 public safety and sanitation.



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652 5. If the premises are a part of a condominium or are
653 governed by a mandatory homeowners' association, the manager or
654 other representative of the association has confirmed that
655 assessments for the unit are at least 90 days delinquent.

656 6. Interviews with at least two neighbors in different
657 households indicate that the residence has been abandoned. The
658 neighbors must be adjoining, across the street in view of the
659 home, or across the hall or adjacent to the unit in a
660 condominium or cooperative.

661
662 The process server making attempts to locate an occupant of the
663 residential real property may provide, by affidavit and
664 photographic or other documentation, evidence of the condition
665 of the residential real property.

666 (2) (a) The party entitled to enforce the note and mortgage
667 encumbering the residential real property appearing to be
668 abandoned must file a petition before the court seeking to
669 determine the status of the residential real property and to
670 invoke an expedited foreclosure proceeding relating to the
671 property. Upon the filing of an affidavit of diligent search and
672 inquiry and the affidavit or documentary evidence set forth in
673 subsection (1), the court shall, upon request of the petitioner,
674 issue one or more subpoenas to the utility companies serving the
675 residential real property commanding disclosure of the status of
676 utility service to the subject property, including whether
677 utilities are currently turned off and whether all outstanding
678 utility payments have been made and, if so, by whom.

679 (b) If, after review of the response of the utility
680 companies to the subpoenas and all other matters of record, the



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681 court determines the property to have been abandoned, the party
682 entitled to foreclose on interest encumbering the residential
683 real property is entitled to use the expedited mortgage
684 foreclosure procedures set forth in s. 702.10 upon service by
685 publication. However, service must be made on any condominium,
686 cooperative, or homeowners' association having a lien interest
687 in the property and all other junior lienholders as required by
688 law.

689 Section 11. This act is intended to be remedial in nature
690 and applies to any action filed on or after the effective date
691 of this act. The failure to strictly comply with the
692 requirements of this act may be asserted only within the
693 foreclosure proceeding itself and does not affect the validity
694 of any final judgment of foreclosure which may be granted or
695 give rise to any independent cause of action or claim for
696 damages against the plaintiff or any other party.

697 Section 12. This act shall take effect upon becoming a law.

698
699 ===== T I T L E A M E N D M E N T =====

700 And the title is amended as follows:

701 Delete everything before the enacting clause
702 and insert:

703 A bill to be entitled
704 An act relating to mortgage foreclosure proceedings;
705 amending s. 95.11, F.S.; specifying the limitation
706 period for initiating an action to collect a
707 deficiency following the foreclosure of certain
708 dwellings; providing for application to existing
709 causes of action; amending s. 701.04, F.S.; specifying



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710 requirements for a holder of a mortgage to provide an
711 estoppel statement to certain persons requesting the
712 payoff amount for the mortgage; specifying the
713 required contents of the estoppel statement; requiring
714 a person who provides a mortgage satisfaction to
715 provide supplemental information if the person was not
716 the owner of the mortgage; requiring certain persons
717 who are not a mortgagor to provide information showing
718 the requestor's ownership interest in the property to
719 the mortgageholder when making a request for the
720 payoff amount of the mortgage; specifying documents
721 that the person who provides the mortgage satisfaction
722 must provide to the payor of a mortgage note;
723 specifying a fee for failing to timely provide the
724 required documents to the payor; authorizing the use
725 of a summary procedure to compel compliance with
726 requirements to provide an estoppel statement or the
727 documents that must be provided by the person who
728 provides a mortgage satisfaction; creating s. 701.045,
729 F.S.; requiring a party who is owed and who is fully
730 paid money due on a lien or judgment to execute in
731 writing an instrument acknowledging satisfaction of
732 the lien or judgment, to have the instrument recorded
733 in the official records of the appropriate county
734 requiring the party, and to send within a specified
735 time the recorded instrument to the person who made
736 full payment; providing for attorney fees and costs;
737 requiring the party receiving full payment for a
738 judgment for which a writ of execution has been



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739 issued, docketed, and indexed with a sheriff to
740 request, in writing and addressed to the sheriff, the
741 return of the satisfied writ of execution; requiring
742 compliance with certain procedures; creating s.
743 702.015, F.S.; specifying required contents of a
744 complaint seeking to foreclose on certain types of
745 residential properties with respect to the authority
746 of the plaintiff to foreclose on the note and the
747 location of the note; creating s. 702.036, F.S.;
748 requiring a court to treat a challenge to a final
749 judgment of foreclosure as a claim for monetary
750 damages under certain circumstances; amending s.
751 702.06, F.S.; providing that a person who forecloses
752 on a mortgage may not initiate an action to recover a
753 deficiency if the court in the foreclosure action has
754 granted or denied a claim for a deficiency judgment;
755 limiting the amount of the deficiency judgment;
756 requiring a separate action to recover a deficiency to
757 be initiated within a certain time period; amending s.
758 702.10, F.S.; expanding the class of persons
759 authorized to move for expedited foreclosure; defining
760 the term "lienholder"; providing requirements and
761 procedures with respect to an order directed to
762 defendants to show cause why a final judgment of
763 foreclosure should not be entered; providing that
764 certain failures by a defendant to make certain
765 filings or to make certain appearances may have
766 specified legal consequences; requiring the court to
767 enter a final judgment of foreclosure and order a



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768 foreclosure sale under certain circumstances; amending
769 a restriction on a mortgagee to request a court to
770 order a mortgagor defendant to make payments or to
771 vacate the premises during an action to foreclose on
772 residential real estate to provide that the
773 restriction applies to all but owner-occupied
774 residential property; providing a presumption
775 regarding owner-occupied residential property;
776 requesting the Supreme Court to adopt rules and forms
777 for use in expedited foreclosure proceedings; creating
778 s. 702.11, F.S.; specifying security that may be
779 determined by the court as adequate protection against
780 a loss by another person seeking to enforce the
781 mortgage; authorizing the holder of a note to initiate
782 an action against a person who wrongfully claimed to
783 be entitled to enforce the note for damages and
784 attorney fees and costs; authorizing the holder of the
785 note to pursue the recovery against any adequate
786 protections given by the person who wrongfully claimed
787 to be entitled to enforce the note; creating s.
788 702.13, F.S.; establishing expedited foreclosure
789 proceedings for abandoned residential real property
790 and procedures and requirements with respect thereto;
791 providing for application of the act; providing an
792 effective date.

By Senator Latvala

16-00993A-12

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1 A bill to be entitled
 2 An act relating to mortgage foreclosure proceedings;
 3 providing a short title; specifying the public policy
 4 of this state with respect to mortgage foreclosure
 5 proceedings; amending s. 95.11, F.S.; specifying the
 6 limitation period for initiating an action to collect
 7 a deficiency following the foreclosure of certain
 8 dwellings; amending s. 701.04, F.S.; specifying
 9 requirements for a holder of a mortgage to provide an
 10 estoppel statement to certain persons requesting the
 11 payoff amount for the mortgage; specifying the
 12 required contents of the estoppel statement; requiring
 13 a person who provides a mortgage satisfaction to
 14 provide supplemental information if the person was not
 15 the owner of the mortgage; requiring certain persons
 16 who are not a mortgagor to provide information showing
 17 the requestor's ownership interest in the property to
 18 the mortgageholder when making a request for the
 19 payoff amount of the mortgage; specifying documents
 20 that the person who provides the mortgage satisfaction
 21 must provide to the payor of a mortgage note;
 22 specifying a fee for failing to timely provide the
 23 required documents to the payor; authorizing the use
 24 of a summary procedure to compel compliance with
 25 requirements to provide an estoppel statement or the
 26 documents that must be provided by the person who
 27 provides a mortgage satisfaction; creating s. 701.045,
 28 F.S.; requiring certain individuals to execute
 29 instruments acknowledging the satisfaction of liens

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30 and judgments and to provide a certified copy of the
 31 recorded satisfaction to the person who made the full
 32 payment; requiring certain persons to request return
 33 of a writ of execution to be returned by the sheriff
 34 as fully satisfied; requiring a person who receives
 35 full payment of a judgment lien to deliver a statement
 36 to the judgment debtor specifying that the lien has
 37 been satisfied and released; creating s. 702.015,
 38 F.S.; specifying required contents of a complaint
 39 seeking to foreclose on certain types of residential
 40 properties with respect to the authority of the
 41 plaintiff to foreclose on the note and the location of
 42 the note; creating s. 702.034, F.S.; requiring a
 43 foreclosing party in certain mortgage foreclosure
 44 actions to provide notice to the mortgagors and
 45 tenants relating to their rights and obligations;
 46 specifying the form and contents of the notice;
 47 amending s. 702.035, F.S.; making technical and
 48 grammatical changes to publication requirements for
 49 legal notices concerning foreclosure proceedings;
 50 creating s. 702.036, F.S.; requiring a court to treat
 51 a challenge to a final judgment of foreclosure as a
 52 claim for monetary damages under certain
 53 circumstances; amending s. 702.04, F.S.; providing
 54 that proceedings to foreclose a lien on certain
 55 properties located in more than one county must be
 56 conducted in one of the counties within which the
 57 property is located; requiring the certificates of
 58 title to the foreclosed property to be recorded in

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59 every county in which the property is located; making
 60 technical and grammatical changes; amending s. 702.06,
 61 F.S.; providing that a person who forecloses on a
 62 mortgage may not initiate an action to recover a
 63 deficiency if the court in the foreclosure action has
 64 granted or denied a claim for a deficiency judgment;
 65 requiring a separate action to recover a deficiency to
 66 be initiated within a certain time period; amending s.
 67 702.065, F.S.; specifying a threshold amount of a
 68 claim for attorney fees below which the parties are
 69 not required to file affidavits of reasonable attorney
 70 fees and the court is not required to hold a hearing
 71 or adjudge the requested fees as reasonable; amending
 72 s. 702.10, F.S.; requiring that a complaint in a
 73 foreclosure proceeding be in the form of an affidavit
 74 sufficient to support a motion for a summary judgment;
 75 authorizing the plaintiff to request the clerk to
 76 issue a summons to the defendants to show cause why a
 77 final judgment of foreclosure should not be entered;
 78 specifying the time at which a show cause hearing may
 79 be held; providing that the filing of defenses by
 80 motion or by a responsive pleading may constitute
 81 cause for the court not to enter a final judgment of
 82 foreclosure; providing that the failure to file a
 83 response to the summons may constitute a waiver of the
 84 right to a hearing; specifying a threshold amount of a
 85 claim for attorney fees below which the parties are
 86 not required to file affidavits of reasonable attorney
 87 fees and the court is not required to hold a hearing

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88 or adjudge the requested fees as reasonable; requiring
 89 a court to promptly enter a judgment of foreclosure
 90 under certain circumstances if the defendants waive
 91 the right to be heard in a show cause hearing;
 92 authorizing a mortgagee to request a court to order a
 93 defendant to show cause why an order to make payments
 94 during the pendency of a foreclosure proceeding should
 95 be issued with respect to property other than a
 96 homestead; creating a rebuttable presumption of the
 97 homestead status of certain properties; creating s.
 98 702.11, F.S.; specifying security that may be
 99 determined by the court as adequate protection against
 100 a loss by another person seeking to enforce the
 101 mortgage; authorizing the holder of a note to initiate
 102 an action against a person who wrongfully claimed to
 103 be entitled to enforce the note for damages and
 104 attorney fees and costs; authorizing the holder of the
 105 note to pursue the recovery against any adequate
 106 protections given by the person who wrongfully claimed
 107 to be entitled to enforce the note; creating s.
 108 702.12, F.S.; providing for the award of attorney fees
 109 and the imposition of sanctions for raising
 110 unsupported claims or defenses or causing an
 111 unreasonable delay in a foreclosure proceeding;
 112 creating s. 702.13, F.S.; establishing expedited
 113 foreclosure proceedings for abandoned residential real
 114 property and procedures and requirements with respect
 115 thereto; creating s. 702.14, F.S.; providing
 116 procedures and requirements for actions to foreclose

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117 on mortgages on actual or potential homestead
 118 property; creating s. 702.15, F.S.; requiring owners
 119 and landlords of property in the process of
 120 foreclosure to provide certain notice and disclosures
 121 to tenants or prospective tenants; providing penalties
 122 for failing to give such notice or make the required
 123 disclosures; creating s. 702.16, F.S.; requiring
 124 certain documents to be filed contemporaneously with
 125 the filing of an initial complaint for foreclosure;
 126 providing for application of the act; providing an
 127 effective date.

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

131 Section 1. This act may be cited as the "Florida Fair
 132 Foreclosure Act."

133 Section 2. The public policy in this state is to encourage
 134 borrowers and lenders to pursue alternatives to mortgage
 135 foreclosure before filing suit and to explore possible
 136 settlements in mediation. Once suit has been filed, the public
 137 interest is served by maintaining the strong tradition of
 138 judicial due process in mortgage foreclosure cases while moving
 139 mortgage foreclosure cases to final resolution expeditiously in
 140 order to return real property to the stream of commerce, but to
 141 do so consistent with due process and fundamental fairness and
 142 without impairing the ability of the courts to manage their
 143 dockets and schedules. This act is an effort to provide
 144 additional tools to the courts to assist in achieving such a
 145 balance.

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146 Section 3. Paragraph (b) of subsection (2) and subsection
 147 (5) of section 95.11, Florida Statutes, are amended to read:
 148 95.11 Limitations other than for the recovery of real
 149 property.—Actions other than for recovery of real property shall
 150 be commenced as follows:

151 (2) WITHIN FIVE YEARS.—

152 (b) A legal or equitable action on a contract, obligation,
 153 or liability founded on a written instrument, except for an
 154 action to enforce a claim against a payment bond, which shall be
 155 governed by the applicable provisions of ss. 255.05(10) and
 156 713.23(1)(e), and except for an action for a deficiency
 157 judgment, which shall be governed by paragraph (5)(c) and s.
 158 702.06.

159 (5) WITHIN ONE YEAR.—

160 (a) An action for specific performance of a contract.

161 (b) An action to enforce an equitable lien arising from the
 162 furnishing of labor, services, or material for the improvement
 163 of real property.

164 (c) An action to enforce rights under the Uniform
 165 Commercial Code—Letters of Credit, chapter 675.

166 (d) An action against any guaranty association and its
 167 insured, with the period running from the date of the deadline
 168 for filing claims in the order of liquidation.

169 (e) An action to enforce any claim against a payment bond
 170 on which the principal is a contractor, subcontractor, or sub-
 171 subcontractor as defined in s. 713.01, for private work as well
 172 as public work, from the last furnishing of labor, services, or
 173 materials or from the last furnishing of labor, services, or
 174 materials by the contractor if the contractor is the principal

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175 on a bond on the same construction project, whichever is later.

176 (f) Except for actions described in subsection (8), a
177 petition for extraordinary writ, other than a petition
178 challenging a criminal conviction, filed by or on behalf of a
179 prisoner as defined in s. 57.085.

180 (g) Except for actions described in subsection (8), an
181 action brought by or on behalf of a prisoner, as defined in s.
182 57.085, relating to the conditions of the prisoner's
183 confinement.

184 (h) An action under s. 702.06, to collect a deficiency
185 following the foreclosure of an owner-occupied, one-family to
186 four-family dwelling unit.

187 Section 4. Section 701.04, Florida Statutes, is amended to
188 read:

189 701.04 Cancellation of mortgages, liens, and judgments.—

190 (1) (a) If a mortgagor, a holder of an interest in property
191 encumbered by a mortgage, or a designee of either makes a
192 written request for the payoff amount of the mortgage as of a
193 certain date, the holder of the mortgage shall provide a written
194 estoppel statement executed by an officer or authorized agent of
195 the holder of the mortgage to the person making the request
196 within 15 days after the date the request was received. The
197 estoppel statement shall be delivered to the place, facsimile
198 number, or e-mail address designated in the written request. The
199 estoppel statement shall set ~~Within 14 days after receipt of the~~
200 ~~written request of a mortgagor, the holder of a mortgage shall~~
201 ~~deliver to the mortgagor at a place designated in the written~~
202 ~~request an estoppel letter setting forth:~~

203 1. The unpaid balance of the loan secured by the mortgage,

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204 including principal, all accrued interest, and any other charges
205 properly due under or secured by the mortgage as of the date
206 specified in the request. ~~and~~

207 2. Interest on a per-day basis for the unpaid balance for a
208 period of at least 20 days after the date specified in the
209 request.

210 3. A certification that the party providing the estoppel
211 statement is the holder of the original promissory note secured
212 thereby, or is the person or agent of the person entitled to
213 enforce the note pursuant to s. 673.3011.

214 4. A commitment to comply with paragraph (d) upon timely
215 receipt of the amounts set forth in the estoppel statement.

216 (b) The mortgagee may not charge a fee for the preparation
217 or delivery of the first two estoppel statements requested for
218 any one mortgage in any calendar month. This paragraph is not
219 intended to limit requirements of federal law.

220 (c) Subsequent owners of the property encumbered by the
221 mortgage, and creditors and lienholders taking an interest in
222 the property for a valuable consideration, and those claiming
223 by, through, and under them, may rely on the estoppel statement
224 and are entitled to the benefits of the statement.

225 (d) Whenever the amount of money due on a ~~any~~ mortgage,
226 lien, or judgment ~~is shall be~~ fully paid to the person or party
227 entitled to ~~the~~ payment ~~thereof~~, or all obligations secured by
228 the mortgage or lien are otherwise satisfied, the mortgagee,
229 creditor, or assignee, or the attorney of record in the case of
230 a judgment, to whom such payment ~~has~~ shall have been made or
231 satisfaction has been given, shall execute in writing an
232 instrument acknowledging satisfaction of the ~~said~~ mortgage.

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 233 ~~lien, or judgment~~ and have the same acknowledged, or proven, and
 234 ~~recorded duly entered of record~~ in the official records book
 235 ~~provided by law for such purposes~~ in the proper county. If the
 236 person or party executing the satisfaction is not shown as the
 237 owner of the mortgage in the official records, the instrument
 238 shall be supplemented by an affidavit that the person executing
 239 the satisfaction is in physical possession of the original
 240 promissory note secured by the mortgage or was entitled to
 241 enforce the note pursuant to s. 673.3011. If the person was
 242 entitled only to enforce the note, but was not in possession of
 243 the note, the person shall provide in the affidavit the specific
 244 factual basis for such authority.

(e) If the written request for the payoff amount for the
 245 mortgage as of a certain date is not from the mortgagor or the
 246 designee of the mortgagor, the request must include a copy of
 247 the instrument or instruments showing the requestor's ownership
 248 interest in the property. The mortgageholder, in response to the
 249 request, is not required to itemize the unpaid balance of the
 250 loan secured by the mortgage.

(2) (a) Within 60 days after ~~of~~ the date of receipt of the
 252 full payment of the mortgage in accord with the estoppel
 253 statement, ~~lien, or judgment~~, the person required to acknowledge
 254 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or
 255 cause to be sent ~~the recorded satisfaction~~ to the maker of the
 256 promissory note, or such other person as may be designated in
 257 writing by the payor at or after the final payment, a certified
 258 copy of the recorded satisfaction. The person shall send to the
 259 payor of a mortgage note:

1. The original promissory note, marked "paid in full"; or

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 262 2. An affidavit stating that the note was lost, destroyed,
 263 or stolen, together with exhibits in compliance with s. 702.015
 264 and evidence of adequate protections as provided in s. 702.11.

(b) If the documents required by this subsection are not
 265 delivered within 60 days, the party who received payment on the
 266 note or mortgage shall pay to the maker of the promissory note
 267 or its designee a fee in the amount of \$100 per day for each day
 268 beyond 60 days that the documents have not been delivered. The
 269 aggregate fees under this paragraph may not exceed \$5,000.

(3) A summary procedure pursuant to s. 51.011 may be
 271 brought to compel compliance with the requirements of this
 272 section, and the prevailing party shall recover reasonable
 273 attorney fees and costs. The court may limit recovery of
 274 attorney fees and costs if an unreasonable number of requests
 275 for estoppel statements have been made. ~~person who has made the~~
 276 full payment. In the case of a civil action arising out of the
 277 provisions of this section, the prevailing party shall be
 278 entitled to attorney's fees and costs.

(4)(2) Whenever a writ of execution has been issued,
 280 docketed, and indexed with a sheriff and the judgment upon which
 281 it was issued has been fully paid, it ~~is shall be~~ the
 282 responsibility of the party receiving payment to request, in
 283 writing, addressed to the sheriff, return of the writ of
 284 execution as fully satisfied.

Section 5. Section 701.045, Florida Statutes, is created to
 286 read:

701.045 Cancellation of liens and judgments.—

(1) Whenever the amount of money due on a lien, other than
 288 a mortgage, or judgment is fully paid, the person or party
 290

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 291 entitled to payment, or the creditor or assignee, to whom
 292 payment has been made shall execute in writing an instrument
 293 acknowledging satisfaction of the lien or judgment and have it
 294 acknowledged or proven and recorded in the official records in
 295 the proper county. Within 60 days after the date of receipt of
 296 the full payment of the lien or judgment, the person required to
 297 acknowledge satisfaction of the lien or judgment shall send a
 298 certified copy of the recorded satisfaction to the person who
 299 made the full payment. In the case of a civil action arising out
 300 of this section, the prevailing party is entitled to attorney
 301 fees and costs.

302 (2) Whenever a writ of execution has been issued, docketed,
 303 and indexed with a sheriff and the judgment upon which it was
 304 issued has been fully paid, the party receiving payment shall
 305 request, in writing and addressed to the sheriff, return of the
 306 writ of execution as fully satisfied.

307 (3) The party receiving full payment of any judgment shall
 308 also comply with s. 55.206 relating to statements releasing a
 309 judgment lien.

310 Section 6. Section 702.015, Florida Statutes, is created to
 311 read:

312 702.015 Elements of complaint; lost, destroyed, or stolen
 313 note affidavit.-

314 (1) Any complaint that seeks to foreclose a mortgage or
 315 other lien on residential real property, including individual
 316 units of condominiums and cooperatives, designed principally for
 317 occupation by from one to four families, but not including an
 318 interest in a timeshare property, which secures a promissory
 319 note must:

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 320 (a) Contain affirmative allegations expressly made by the
 321 plaintiff at the time the proceeding is commenced that the
 322 plaintiff is the holder of the original note secured by the
 323 mortgage; or

324 (b) Allege with specificity the factual basis by which the
 325 plaintiff is a person entitled to enforce the note under s.
 326 673.3011.

327 (2) If a party has been delegated the authority to
 328 institute a mortgage foreclosure action on behalf of the holder
 329 of the note, the complaint shall describe the authority of the
 330 plaintiff and identify, with specificity, the document that
 331 grants the plaintiff the authority to act on behalf of the
 332 holder of the note. This subsection is intended to require
 333 initial disclosure of status and pertinent facts and not to
 334 modify law regarding standing or real parties in interest.

335 (3) If the plaintiff is in physical possession of the
 336 original promissory note, the plaintiff must file with the
 337 court, contemporaneously with and as a condition precedent to
 338 the filing of the complaint for foreclosure, certification,
 339 under penalty of perjury, that the plaintiff is in physical
 340 possession of the original promissory note. The certification
 341 must set forth the physical location of the note, the name and
 342 title of the individual giving the certification, and the name
 343 of the person who personally verified such physical possession,
 344 and the time and date on which possession was verified. Correct
 345 copies of the note and all allonges to the note must be attached
 346 to the certification. The original note and the allonges must be
 347 filed with the court before the entry of any judgment of
 348 foreclosure or judgment on the note.

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349 (4) If the plaintiff seeks to enforce a lost, destroyed, or
 350 stolen instrument, an affidavit executed under penalty of
 351 perjury must be attached to the complaint. The affidavit must:

352 (a) Detail a clear chain of all assignments for the
 353 promissory note that is the subject of the action.

354 (b) Set forth facts showing that the plaintiff is entitled
 355 to enforce a lost, destroyed, or stolen instrument pursuant to
 356 s. 673.3091.

357 (c) Include as exhibits to the affidavit such copies of the
 358 note and the allonges to the note, assignments of mortgage,
 359 audit reports showing physical receipt of the original note, or
 360 other evidence of the acquisition, ownership, and possession of
 361 the note as may be available to the plaintiff.

362 Section 7. Section 702.034, Florida Statutes, is created to
 363 read:

364 702.034 Notice of rights and obligations of mortgagors and
 365 tenants by foreclosing party.-

366 (1) The foreclosing party in a mortgage foreclosure action
 367 involving residential real property, including individual units
 368 of condominiums and cooperatives, designed principally for
 369 occupancy by from one to four families, but not including an
 370 interest in a timeshare property, shall provide notice
 371 substantially in accordance with this section to:

372 (a) A mortgagor having an interest in the property and the
 373 record title owners of the property; and

374 (b) All tenants of a dwelling unit on the property if the
 375 foreclosing party is seeking to foreclose the interest of the
 376 tenants.

377 (2) The notice required under paragraph (1)(a) shall:

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378 (a) Be delivered along with the summons and complaint. The
 379 notice must be in 14-point boldfaced type and the title of the
 380 notice must be in 20-point boldfaced type. The notice must be on
 381 its own page.

382 (b) Appear as follows:

384 NOTICE: YOU ARE IN DANGER OF LOSING YOUR HOME

386 If you fail to respond to the summons and complaint in
 387 this foreclosure action, you may lose your home.
 388 Please read the summons and complaint carefully. You
 389 should immediately contact an attorney or your local
 390 legal aid office to obtain advice on how to protect
 391 yourself. Sending a payment to your mortgage company
 392 will not stop this foreclosure action.

394 YOU MUST RESPOND BY PREPARING A FORMAL WRITTEN
 395 RESPONSE AND DELIVERING A COPY OF YOUR RESPONSE TO THE
 396 ATTORNEY FOR THE PLAINTIFF (LENDER) AND BY FILING THE
 397 ORIGINAL RESPONSE WITH THE COURT WITHIN 20 DAYS AFTER
 398 BEING SERVED. THERE IS NO CHARGE FOR FILING THE
 399 WRITTEN RESPONSE. A TELEPHONE CALL OR E-MAIL TO THE
 400 ATTORNEY FOR THE PLAINTIFF WILL NOT SATISFY THE
 401 REQUIREMENT TO FILE A RESPONSE. THIS LAWSUIT DOES NOT
 402 MEAN THAT YOU MUST IMMEDIATELY MOVE OUT OF YOUR
 403 PROPERTY.

404 SOURCES OF INFORMATION AND ASSISTANCE:

405 The state encourages you to become informed about your
 406

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407 options in foreclosure. You should contact a licensed
 408 Florida attorney to assist you. If you cannot afford
 409 an attorney, your local legal aid office may be able
 410 to assist you at little or no cost. You may also wish
 411 to contact government agencies and nonprofit
 412 organizations that may provide you with cost-free
 413 information about possible options, including working
 414 with your lender during this process.

415
 416 FORECLOSURE RESCUE SCAMS:

417 Be cautious of people who approach you with offers to
 418 help you keep your home. Some individuals watch for
 419 notices of foreclosure actions in order to unfairly
 420 profit from a homeowner's distress. You should be
 421 extremely cautious about any promises for help and any
 422 suggestions that you should pay these individuals a
 423 fee or transfer the deed to your property to them.
 424 State law requires any nonattorney offering such
 425 services for profit to enter into a contract that
 426 fully describes the services they will perform and the
 427 fees they will charge. State law also prohibits the
 428 person from taking any money from you until they have
 429 completed all such promised services.

430
 431 (3) The notice to any tenant required under paragraph
 432 (1)(b) shall:

433 (a) Be delivered with the summons and complaint. The title
 434 of the notice must be in 14-point boldfaced type and the title
 435 of the notice must be in 20-point boldfaced type. The notice

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436 must be on its own page.

437 (b) Appear substantially as follows:

438
 439 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

440
 441 Florida law requires that you be provided with this
 442 notice about the foreclosure process. Please read it
 443 carefully.

444
 445 We, ...(name of foreclosing party)..., are the
 446 foreclosing party and are located at ...(foreclosing
 447 party's address)... We can be reached at
 448 ...(foreclosing party's telephone number)....

449
 450 The property you are renting is the subject of a
 451 foreclosure proceeding. You should file a written
 452 response to this summons and complaint and deliver a
 453 copy of the written response to the attorney for the
 454 plaintiff and file the original with the court within
 455 20 days after being served. There is no charge for
 456 filing the written response. A telephone call or an e-
 457 mail to the attorney for the plaintiff will not
 458 satisfy the requirement to file a response. If you
 459 have a written lease and are not the owner of the
 460 residence, and the lease required payment of rent
 461 that, at the time it was entered into, was not
 462 substantially less than the fair market rent for the
 463 property, you may be entitled to remain in occupancy
 464 under the federal Protecting Tenants at Foreclosure

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465 Act of 2009. If you do not have a written lease, under
 466 the same federal law you may be entitled to remain in
 467 your home until 90 days after the person or entity
 468 that acquires title to the property provides you with
 469 a notice to vacate the premises. If you are a
 470 subsidized tenant under federal, state, or local law
 471 or if you are a tenant subject to rent control, rent
 472 stabilization, or a federal statutory scheme, you may
 473 have other rights. If the federal Protecting Tenants
 474 at Foreclosure Act of 2009 and these other laws do not
 475 apply to your situation, you may be required to vacate
 476 the property upon completion of the foreclosure. The
 477 filing of a foreclosure action does not automatically
 478 terminate your obligation to pay rent to your
 479 landlord. You should contact a licensed Florida
 480 attorney to understand your rights. If you cannot
 481 afford an attorney, your local legal aid office may be
 482 able to assist you at little or no cost to you.

483
 484 (4) Only one notice is required under this section for any
 485 party defendant.

486 (5) The notice required by subsections (1)-(3) is
 487 informational only. The failure to strictly comply with the
 488 notice requirements of this section does not affect the validity
 489 of any final judgment of foreclosure which may be granted, or
 490 give rise to any independent cause of action or claim for
 491 damages against the plaintiff or any other party.

492 Section 8. Section 702.035, Florida Statutes, is amended to
 493 read:

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494 702.035 Publication requirements for legal notices ~~notice~~
 495 concerning foreclosure proceedings.—Whenever a legal
 496 advertisement, publication, or notice relating to a foreclosure
 497 proceeding is required to be placed in a newspaper, ~~it is~~ the
 498 ~~responsibility of the~~ petitioner or petitioner's attorney is
 499 responsible for placing the ~~to place such~~ advertisement,
 500 publication, or notice. For counties having a total population
 501 greater with more than 1 million ~~total population~~ as reflected
 502 in the 2010 ~~2000~~ Official Decennial Census of the United States
 503 Census Bureau as shown on the official website of the United
 504 States Census Bureau, any notice of publication required by this
 505 section shall be deemed to have been published in accordance
 506 with the law if the notice is published in a newspaper that has
 507 been entered as a periodical matter at a post office in the
 508 county in which the newspaper is published, is published a
 509 minimum of 5 days a week, exclusive of legal holidays, and has
 510 been in existence and published a minimum of 5 days a week,
 511 exclusive of legal holidays, for 1 year or is a direct successor
 512 to a newspaper that has been in existence for 1 year that has
 513 been published a minimum of 5 days a week, exclusive of legal
 514 holidays. The advertisement, publication, or notice shall be
 515 placed directly by the attorney for the petitioner, by the
 516 petitioner if acting pro se, or by the clerk of the court. Only
 517 the actual costs charged by the newspaper for the advertisement,
 518 publication, or notice may be charged as costs in the action.

519 Section 9. Section 702.036, Florida Statutes, is created to
 520 read:

521 702.036 Finality of mortgage foreclosure judgment.—

522 (1)(a) In an action or proceeding in which a party seeks to

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523 set aside, invalidate, or challenge the validity of a final
 524 judgment of foreclosure of a mortgage or to establish or
 525 reestablish a lien or encumbrance on the property in abrogation
 526 of the final judgment of foreclosure of a mortgage, the court
 527 shall treat such request solely as a claim for monetary damages
 528 and may not grant relief that adversely affects the quality or
 529 character of the title to the property, if:

530 1. A final judgment of foreclosure of a mortgage has been
 531 entered as to a property;

532 2. All applicable appeals periods have run as to the final
 533 judgment of foreclosure of a mortgage and an appeal has not been
 534 filed or, if an appeal has been filed, it has not been finally
 535 resolved;

536 3. The property has been acquired for value, by a person
 537 not affiliated with the foreclosing lender or the foreclosed
 538 owner, at a time in which no lis pendens regarding the suit to
 539 set aside, invalidate, or challenge the foreclosure appears in
 540 the official records of the county where the property was
 541 located; and

542 4. The party seeking relief from the final judgment of
 543 foreclosure of a mortgage has been properly served in the
 544 foreclosure lawsuit as provided in chapter 48 or chapter 49.

545 (b) This subsection does not limit the right to pursue any
 546 other relief to which a person may be entitled, including, but
 547 not limited to, compensatory damages, punitive damages,
 548 statutory damages, consequential damages, injunctive relief, or
 549 fees and costs, and which does not adversely affect the
 550 ownership of the title to the property as vested in the
 551 unaffiliated purchaser for value.

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552 (2) For purposes of this section, the following, without
 553 limitation, shall be considered persons affiliated with the
 554 foreclosing lender:

555 (a) The foreclosing lender or any loan servicer for the
 556 loan being foreclosed;

557 (b) Any past or present owner or holder of the loan being
 558 foreclosed;

559 (c) Any maintenance company, holding company, foreclosure
 560 services company, or law firm under contract to any entity
 561 listed in paragraph (a), paragraph (b), or this paragraph, with
 562 regard to the loan being foreclosed; or

563 (d) Any parent entity, subsidiary, or other person who
 564 directly, or indirectly through one or more intermediaries,
 565 controls or is controlled by, or is under common control with,
 566 any entity listed in paragraph (a), paragraph (b), or paragraph
 567 (c).

568 (3) After foreclosure of a mortgage based upon the
 569 enforcement of a lost, destroyed, or stolen note, a person who
 570 is not a party to the underlying foreclosure action but who
 571 claims to be the actual holder of the promissory note secured by
 572 the foreclosed mortgage does not have a claim against the
 573 foreclosed property after it has been conveyed for valuable
 574 consideration to a person not affiliated with the foreclosing
 575 lender or the foreclosed owner. This section does not preclude
 576 the actual holder of the note from pursuing recovery from any
 577 adequate protection given under s. 673.3091 by the person who
 578 enforced the note or from the party who wrongfully claimed to be
 579 the owner or holder of the promissory note or the maker of the
 580 note or from any other person against whom the actual holder of

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581 the note may have a claim relating to the note.

582 Section 10. Section 702.04, Florida Statutes, is amended to

583 read:

584 702.04 Foreclosing mortgages and liens on Mortgaged lands

585 in different counties.-~~If~~ When a mortgage or other lien applies

586 to includes lands, railroad track, right-of-way, or terminal

587 facilities and station grounds, located lying in ~~two or~~ more

588 than one county counties, the mortgage or lien it may be

589 foreclosed in any one of the said counties where the property is

590 located.,~~and~~ All proceedings relating to the mortgage or lien

591 shall occur be had in the same that county as if all the

592 ~~mortgaged~~ land, railroad track, right-of-way, or terminal

593 facilities and station grounds lay in the same county. However

594 ~~therein, any except that~~ notice of the sale of foreclosed

595 property must be published in every county where wherein any of

596 the lands, railroad track, right-of-way, or terminal facilities

597 and station grounds to be sold are located lie. After final

598 disposition of the suit, the clerk of the circuit court shall

599 prepare and forward a certified copy of the decree of

600 foreclosure, and the certificates of title, if any, and sale and

601 of the decree of confirmation of sale to the clerk of the

602 circuit court of every county where wherein any of the ~~mortgaged~~

603 lands, railroad tracks, right-of-way, or terminal facilities and

604 station grounds are located lie, to be recorded in the official

605 records foreign judgment book of each such county, and the costs

606 of such copies and of the recording the decree of foreclosure

607 and the certificates of title record thereof shall be taxed as

608 costs in the cause.

609 Section 11. Section 702.06, Florida Statutes, is amended to

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610 read:

611 702.06 Deficiency decree; ~~common-law~~ suit to recover

612 deficiency.-

613 (1) In an action all suits for the foreclosure of a

614 mortgage, mortgages heretofore or hereafter executed the entry

615 of a deficiency decree for any portion of a deficiency, should

616 one exist, ~~must~~ shall be commenced within 1 year after the sale

617 date of the mortgaged property pursuant to a court foreclosure

618 sale or short sale. If not commenced within 1 year after sale,

619 any attempt to collect a deficiency judgment shall be barred.

620 The amount of the deficiency judgment may not exceed the

621 difference between the outstanding debt and the fair market

622 value of the property on the date of sale. The amount of the

623 deficiency judgment may be set off by the amount collected by

624 the servicer or lender pursuant to any mortgage insurance held

625 on the property purchased by the borrower. the sound judicial

626 discretion of the court, but The complainant shall also have the

627 right to sue at common law to recover such deficiency, unless

628 the court in the foreclosure action has granted or denied a

629 claim for a deficiency judgment provided no suit at law to

630 recover such deficiency shall be maintained against the original

631 mortgagor in cases where the mortgage is for the purchase price

632 of the property involved and where the original mortgagee

633 becomes the purchaser thereof at foreclosure sale and also is

634 granted a deficiency decree against the original mortgagor.

635 (2) (a) With respect to an owner-occupied, one-family to

636 four-family dwelling unit, the party to whom a deficiency is

637 owing may move for the entry of a deficiency judgment in the

638 foreclosure action or file a separate action for collection of

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 639 the deficiency, The separate action must be filed within 1 year
 640 after the property has vested in the foreclosing lender or other
 641 purchaser at the foreclosure sale.

642 (b) If a deficiency is not pursued within the time period
 643 specified in this subsection, the vesting of the property or
 644 proceeds of the sale, regardless of the amount, shall be deemed
 645 to be in full satisfaction of the judgment debt and a right to
 646 recover any deficiency in any subsequent action or proceeding is
 647 extinguished.

648 (c) This subsection does not restrict the authority of the
 649 court to determine the entitlement to any assets held by any
 650 receiver or any assignee of the rents and profits of the
 651 property.

652 Section 12. Section 702.065, Florida Statutes, is amended
 653 to read:

654 702.065 Final judgment in uncontested mortgage foreclosure
 655 proceedings where deficiency judgment waived; attorney
 656 attorney's fees when default judgment entered.-

657 (1) In uncontested mortgage foreclosure proceedings in
 658 which the mortgagee waives the right to recoup any deficiency
 659 judgment, the court shall enter final judgment within 90 days
 660 after from the date of the close of pleadings. For ~~the~~ purposes
 661 of this subsection, a mortgage foreclosure proceeding is
 662 uncontested if a default has been entered against all defendants
 663 or no response an answer not contesting the foreclosure has been
 664 timely filed or a default judgment has been entered by the
 665 court.

666 (2) In a mortgage foreclosure proceeding, the parties are
 667 not required to file affidavits of reasonable fees and the court

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 668 is not required to hold a hearing or adjudge the requested
 669 attorney fees to be reasonable if: when a default judgment has
 670 been entered against the mortgagor and

671 (a) The note or mortgage provides for the award of
 672 reasonable attorney attorney's fees; and, it is not necessary
 673 for the court to hold a hearing or adjudge the requested
 674 attorney's fees to be reasonable if

675 (b) The fees do not exceed the greater of 1.5 3 percent of
 676 the principal amount owed at the time of filing the complaint or
 677 \$1,5007

678
 679 even if the note or mortgage does not specify the percentage of
 680 the original amount that would be paid as liquidated damages.
 681 Such fees constitute liquidated damages in any proceeding to
 682 enforce the note or mortgage.

683 (3) This section does not preclude a challenge, in the same
 684 action, to the reasonableness of the attorney attorney's fees.

685 Section 13. Section 702.10, Florida Statutes, is amended to
 686 read:

687 702.10 ~~Order to Show cause~~ hearing; entry of final judgment
 688 of foreclosure; payment during foreclosure.-

689 (1) After a complaint in a foreclosure proceeding has been
 690 filed which is verified in the form of an affidavit sufficient
 691 to support a motion for summary judgment, the plaintiff
 692 mortgagee may request a hearing to show cause an order to show
 693 cause for the entry of final judgment and the court shall
 694 immediately review the complaint. Upon such request, the clerk
 695 If, upon examination of the complaint, the court finds that the
 696 complaint is verified and alleges a cause of action to foreclose

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697 ~~on real property, the court~~ shall promptly issue a summons an
 698 ~~order~~ directed to each ~~the~~ defendant to show cause why a final
 699 judgment of foreclosure should not be entered.

700 (a) The summons order shall:

701 1. Set the date and time for a hearing ~~on the order~~ to show
 702 cause. However, the date for the hearing may not occur ~~be set~~
 703 sooner than 20 days after the service of the summons or 45 days
 704 after the service of the complaint, whichever is later ~~order~~. If
 705 ~~when~~ service is obtained by publication, the date for the
 706 hearing may not be set sooner than 55 ~~30~~ days after the first
 707 publication. The hearing must be held within 60 days ~~after the~~
 708 ~~date of service~~. Failure to hold the hearing within such time
 709 ~~does not affect the validity of the order to show cause or the~~
 710 ~~jurisdiction of the court to issue subsequent orders.~~

711 2. Direct the time within which service of the order to
 712 show cause and the complaint must be made upon the defendant.

713 ~~2.3-~~ State that the filing of defenses by a motion or by a
 714 responsive pleading ~~verified or sworn answer~~ at or before the
 715 hearing to show cause may constitute ~~constitutes~~ cause for the
 716 court not to enter a ~~the attached~~ final judgment of foreclosure.

717 ~~3.4-~~ State that any ~~the~~ defendant has the right to file
 718 affidavits or other papers at or before the time of the hearing
 719 to show cause and may appear personally or by way of an attorney
 720 at the hearing.

721 ~~4.5-~~ State that, if a ~~the~~ defendant files defenses by a
 722 motion, the hearing time may be used to hear the defendant's
 723 motion.

724 ~~5.6-~~ State that, if a ~~the~~ defendant fails to appear at the
 725 hearing to show cause or fails to file a response ~~defenses by a~~

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726 ~~motion or by a verified or sworn answer~~ or files an answer not
 727 contesting the foreclosure, the defendant is deemed ~~may be~~
 728 ~~considered~~ to have waived the right to a hearing and in such
 729 case the court shall, unless the record shows that the relief is
 730 unavailable, may enter a final judgment of foreclosure ordering
 731 the clerk of the court to conduct a foreclosure sale.

732 ~~6.7-~~ State that the parties are not required to file
 733 affidavits of reasonable fees and the court is not required to
 734 hold a hearing or adjudge the requested attorney fees to be
 735 reasonable if the mortgage provides for reasonable attorney
 736 attorney's fees and the requested attorney ~~attorney's~~ fees do
 737 not exceed the greater of 1.5 ~~3~~ percent of the principal amount
 738 owed at the time of filing the complaint or \$1,500, ~~it is~~
 739 ~~unnecessary for the court to hold a hearing or adjudge the~~
 740 ~~requested attorney's fees to be reasonable.~~

741 ~~7.8-~~ Include as an attachment to the summons ~~Attach~~ the
 742 proposed final judgment of foreclosure the plaintiff requests
 743 the court to will enter, if the defendant waives the right to be
 744 ~~heard~~ at the hearing on the order to show cause.

745 ~~8.9-~~ Require the plaintiff mortgagee to serve a copy of the
 746 summons order to show cause on each defendant ~~the mortgagor~~ in
 747 the following manner:

748 a. If a defendant ~~the mortgagor~~ has been served with the
 749 complaint and original process, service of the summons to show
 750 cause on that defendant order may be made in the manner provided
 751 in the Florida Rules of Civil Procedure.

752 b. If a defendant ~~the mortgagor~~ has not been served with
 753 the complaint and original process, the summons order to show
 754 cause, together with ~~the summons~~ and a copy of the complaint,

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 755 shall be served on the defendant mortgagor in the same manner as
 756 provided by law for original process.

757
 758 Any final judgment of foreclosure entered under this subsection
 759 is for in rem relief only. ~~Nothing in~~ This subsection does not
 760 ~~shall~~ preclude the entry of a deficiency judgment where
 761 otherwise allowed by law.

762 (b) The right to be heard at the hearing to show cause is
 763 waived if ~~a the~~ defendant, after being served as provided by law
 764 with ~~a an order to~~ show cause summons, fails to file a response
 765 contesting the foreclosure which would be sufficient to preclude
 766 the entry of a summary judgment, and fails engages in conduct
 767 that clearly shows that the defendant has relinquished the right
 768 to be heard on that order. The defendant's failure to file
 769 defenses by a motion or by a sworn or verified answer or to
 770 appear at the hearing duly scheduled on the order to show cause
 771 summons presumptively constitutes conduct that clearly shows
 772 that the defendant has relinquished the right to be heard. If a
 773 defendant:

774 1. Files a response contesting the foreclosure at or before
 775 the hearing and the response would be sufficient to preclude the
 776 entry of a summary judgment; or

777 2. Appears at the hearing and presents evidence or argument
 778 sufficient to preclude the entry of a summary judgment defenses
 779 by a motion or by a verified or sworn answer at or before the
 780 hearing,

781 such actions constitute action constitutes cause upon the
 782 determination of the court as set forth in paragraph (d) and

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 784 ~~shall preclude precludes~~ the entry of a final judgment at the
 785 hearing to show cause.

786 (c) In a mortgage foreclosure proceeding, when a default
 787 judgment has been entered against the mortgagor the parties are
 788 not required to file affidavits of reasonable fees and the court
 789 is not required to hold a hearing or adjudge the requested
 790 attorney fees to be reasonable if: and

791 1. The note or mortgage provides for the award of
 792 reasonable attorney attorney's fees; and, it is unnecessary for
 793 the court to hold a hearing or adjudge the requested attorney's
 794 fees to be reasonable if

795 2. The fees do not exceed the greater of 1.5 3 percent of
 796 the principal amount owed on the note or mortgage at the time of
 797 filing of the complaint or \$1,500,

798
 799 ~~even if the note or mortgage does not specify the percentage of~~
 800 ~~the original amount that would be paid as liquidated damages.~~

801 (d) If the court finds that each the defendant has waived
 802 the right to be heard as provided in paragraph (b), the court
 803 shall promptly enter a final judgment of foreclosure without the
 804 need for a further hearing upon the filing with the court of the
 805 original note, satisfaction of the conditions for establishment
 806 of a lost note pursuant to law, or a showing to the court that
 807 the obligation to be foreclosed is not evidenced by a promissory
 808 note or other negotiable instrument. If the court finds that a
 809 the defendant has not waived the right to be heard on the
 810 summons order to show cause, the court shall ~~then~~ determine
 811 whether ~~there is~~ cause exists not to enter a final judgment of
 812 foreclosure. If, upon hearing, the court finds that a the

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 813 defendant has not shown cause, the court shall promptly enter a
 814 judgment of foreclosure.

815 (2) In an action for a mortgage foreclosure on a property
 816 other than a homestead, ~~other than residential real estate~~, the
 817 mortgagee may request that the court enter an order directing
 818 the mortgagor defendant to show cause why an order to make
 819 payments during the pendency of the foreclosure proceedings or
 820 an order to vacate the premises should not be entered.

821 (a) The order shall:

822 1. Set the date and time for hearing on the order to show
 823 cause. However, the date for the hearing may ~~shall~~ not be set
 824 sooner than 20 days after the service of the order. If ~~Where~~
 825 service is obtained by publication, the date for the hearing may
 826 ~~shall~~ not be set sooner than 30 days after the first
 827 publication.

828 2. Direct the time within which service of the order to
 829 show cause and the complaint shall be made upon each ~~the~~
 830 defendant.

831 3. State that a ~~the~~ defendant has the right to file
 832 affidavits or other papers at the time of the hearing and may
 833 appear personally or by way of an attorney at the hearing.

834 4. State that, if a ~~the~~ defendant fails to appear at the
 835 hearing to show cause and fails to file defenses by a motion or
 836 by a verified or sworn answer, the defendant may be deemed to
 837 have waived the right to a hearing and in such case the court
 838 may enter an order to make payment or vacate the premises.

839 5. Require the mortgagee to serve a copy of the order to
 840 show cause on the mortgagor in the following manner:

841 a. If the mortgagor has been served with the complaint and

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 842 original process, service of the order may be made in the manner
 843 provided in the Florida Rules of Civil Procedure.

844 b. If the mortgagor has not been served with the complaint
 845 and original process, the order to show cause, together with the
 846 summons and a copy of the complaint, shall be served on the
 847 mortgagor in the same manner as provided by law for original
 848 process.

849 (b) The right of a defendant to be heard at the hearing to
 850 show cause is waived if the defendant, after being served as
 851 provided by law with an order to show cause, engages in conduct
 852 that clearly shows that the defendant has relinquished the right
 853 to be heard on that order. A ~~The~~ defendant's failure to file
 854 defenses by a motion or by a sworn or verified answer or to
 855 appear at the hearing duly scheduled on the order to show cause
 856 presumptively constitutes conduct that clearly shows that the
 857 defendant has relinquished the right to be heard.

858 (c) If the court finds that a ~~the~~ defendant has waived the
 859 right to be heard as provided in paragraph (b), the court may
 860 promptly enter an order requiring payment in the amount provided
 861 in paragraph (f) or an order to vacate.

862 (d) If the court finds that the mortgagor has not waived
 863 the right to be heard on the order to show cause, the court
 864 shall, at the hearing on the order to show cause, consider the
 865 affidavits and other showings made by the parties appearing and
 866 make a determination of the probable validity of the underlying
 867 claim alleged against the mortgagor and the mortgagor's
 868 defenses. If the court determines that the mortgagee is likely
 869 to prevail in the foreclosure action, the court shall enter an
 870 order requiring the mortgagor to make the payment described in

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 871 paragraph (e) to the mortgagee and provide for a remedy as
 872 described in paragraph (f). However, the order shall be stayed
 873 pending final adjudication of the claims of the parties if the
 874 mortgagor files with the court a written undertaking executed by
 875 a surety approved by the court in an amount equal to the unpaid
 876 balance of the mortgage on the property, including all
 877 principal, interest, unpaid taxes, and insurance premiums paid
 878 by the mortgagee.

879 (e) ~~If in the event~~ the court enters an order requiring the
 880 mortgagor to make payments to the mortgagee, payments shall be
 881 payable at such intervals and in such amounts provided for in
 882 the mortgage instrument before acceleration or maturity. The
 883 obligation to make payments pursuant to any order entered under
 884 this subsection shall commence from the date of the motion filed
 885 under this section hereunder. The order shall be served upon the
 886 mortgagor no later than 20 days before the date specified for
 887 the first payment. The order may permit, but ~~may shall~~ not
 888 require the mortgagee to take all appropriate steps to secure
 889 the premises during the pendency of the foreclosure action.

890 (f) ~~If in the event~~ the court enters an order requiring
 891 payments the order shall also provide that the mortgagee shall
 892 be entitled to possession of the premises upon the failure of
 893 the mortgagor to make the payment required in the order unless
 894 at the hearing on the order to show cause the court finds good
 895 cause to order some other method of enforcement of its order.

896 (g) All amounts paid pursuant to this section shall be
 897 credited against the mortgage obligation in accordance with the
 898 terms of the loan documents, ~~provided~~, However, ~~that~~ any
 899 payments made under this section do shall not constitute a cure

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 900 of any default or a waiver or any other defense to the mortgage
 901 foreclosure action.

902 (h) Upon the filing of an affidavit with the clerk that the
 903 premises have not been vacated pursuant to the court order, the
 904 clerk shall issue to the sheriff a writ for possession which
 905 shall be governed by the provisions of s. 83.62.

906 (i) For purposes of this section, a rebuttable presumption
 907 exists that a residential property for which a homestead
 908 exemption for taxation was granted according to the certified
 909 rolls of the latest assessment by the county property appraiser,
 910 before the filing of the foreclosure action, is a homestead.

911 (3) This section does not supersede or limit other
 912 procedures adopted by the court, including, but not limited to,
 913 mandatory mediation and alternative dispute resolution
 914 processes.

915 Section 14. Section 702.11, Florida Statutes, is created to
 916 read:

917 702.11 Adequate protections for lost, destroyed, or stolen
 918 notes in mortgage foreclosure.—

919 (1) In connection with a mortgage foreclosure, the court
 920 may find that the person required to pay the note securing the
 921 mortgage is adequately protected under s. 673.3091 against a
 922 loss that may occur by reason of a claim by another person to
 923 enforce the mortgage if the person seeking to enforce the
 924 mortgage provides:

925 (a) A written indemnification agreement by a person
 926 reasonably believed sufficiently solvent to honor such an
 927 obligation;

928 (b) A surety bond;

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929 (c) A letter of credit issued by a financial institution;

930 (d) A deposit of cash collateral with the clerk of the
931 court; or

932 (e) Such other security as the court may deem appropriate
933 under the circumstances.

934
935 Any security given shall be on terms and in amounts set by the
936 court, for a time period through the running of the statute of
937 limitations for enforcement of the underlying note, and
938 conditioned to indemnify and hold harmless the maker of the note
939 against any loss or damage, including principal, interest, and
940 attorney fees and costs, which might occur by reason of a claim
941 by another person to enforce the note.

942 (2) Any person who wrongly claimed to be the holder of or,
943 pursuant to s. 673.3011, wrongly claimed to be entitled to
944 enforce a lost, stolen, or destroyed note and caused the
945 mortgage secured by the note to be foreclosed is liable to the
946 actual holder of the note for actual damages suffered, together
947 with attorney fees and costs of the actual holder of the note in
948 enforcing rights under this section. The extent of the liability
949 is not limited to any adequate protections given under s.
950 673.3091. In addition, the actual holder of the note may pursue
951 recovery directly against any adequate protections given.

952 (a) The actual holder of the note is not required to pursue
953 recovery against the maker of the note or any guarantor of the
954 note as a condition precedent to pursuing remedies under this
955 section.

956 (b) This section does not limit or restrict the ability of
957 the actual holder of the note to pursue any other claims or

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958 remedies it may have against the maker, the person who wrongly
959 claimed to be the holder, or any person who facilitated or
960 participated in the claim to the note or enforcement of the
961 note.

962 Section 15. Section 702.12, Florida Statutes, is created to
963 read:

964 702.12 Attorney fees; sanctions for raising unsupported
965 claims or defenses; damages for delay of litigation.—Section
966 57.105, which authorizes attorney fees and sanctions for raising
967 unsupported claims or defenses or for causing an unreasonable
968 delay, applies to mortgage foreclosure actions.

969 Section 16. Section 702.13, Florida Statutes, is created to
970 read:

971 702.13 Expedited foreclosure of abandoned residential real
972 property.—

973 (1) As used in this section, the term "abandoned
974 residential real property" means residential real property that
975 is deemed abandoned upon a showing that:

976 (a) A duly licensed process server unaffiliated with the
977 owner or servicer of any mortgage on the residential real
978 property or with the attorney or law firm representing such
979 owner or servicer has made at least three attempts to locate an
980 occupant of the residential real property. The attempts must
981 have been made at least 72 hours apart, and at least one each of
982 such attempts must have been made before 12 p.m., between 12
983 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
984 must include physically knocking or ringing at the door of the
985 residential real property and such other efforts as are normally
986 sufficient to obtain a response from an occupant.

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987 (b) Two or more of the following conditions exist:
 988 1. Windows or entrances to the premises are boarded up or
 989 closed off or multiple window panes are broken and unrepaired.
 990 2. Doors to the premises are smashed through, broken off,
 991 unhinged, or continuously unlocked.
 992 3. Rubbish, trash, or debris has accumulated on the
 993 mortgaged premises.
 994 4. The premises are deteriorating and are below or in
 995 imminent danger of falling below minimum community standards for
 996 public safety and sanitation.
 997
 998 The process server making attempts to locate an occupant of the
 999 residential real property may provide, by affidavit and
 1000 photographic or other documentation, evidence of the condition
 1001 of the residential real property.
 1002 (2) (a) The party entitled to enforce the note and mortgage
 1003 encumbering the residential real property appearing to be
 1004 abandoned must file a petition before the court seeking to
 1005 determine the status of the residential real property and to
 1006 invoke an expedited foreclosure proceeding relating to the
 1007 property. Upon the filing of an affidavit of diligent search and
 1008 inquiry and the affidavit or documentary evidence set forth in
 1009 subsection (1), the court shall, upon request of the petitioner,
 1010 issue one or more subpoenas to the utility companies serving the
 1011 residential real property commanding disclosure of the status of
 1012 utility service to the subject property, including whether
 1013 utilities are currently turned off and whether all outstanding
 1014 utility payments have been made and, if so, by whom.
 1015 (b) If, after review of the response of the utility

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1016 companies to the subpoenas and all other matters of record, the
 1017 court determines the property to have been abandoned, the party
 1018 entitled to enforce the note and mortgage encumbering the
 1019 residential real property shall be entitled to foreclose the
 1020 mortgage using the expedited mortgage foreclosure procedures set
 1021 forth in s. 702.10 upon service by publication. However, service
 1022 must be made on associations holding liens for dues and
 1023 assessments and all other junior lienholders as required by law.
 1024 Section 17. Section 702.14, Florida Statutes, is created to
 1025 read:
 1026 702.14 Homestead; owner-occupied residential property.-
 1027 (1) At the time of serving the initial complaint to
 1028 foreclose a mortgage on an owner-occupied residential homestead
 1029 property, the plaintiff must give proper notice to the borrower
 1030 or owner that he or she has a right to request a conciliation
 1031 conference or mediation before the entry of final judgment in
 1032 the case in order to facilitate a modification or settlement
 1033 with the lender. Such option is available only to owners of real
 1034 property who have filed for homestead exemption status pursuant
 1035 to s. 6, Art. VII of the State Constitution on or before the
 1036 date a foreclosure complaint against the property has been filed
 1037 with the clerk of the court. Such requirement is mandatory for
 1038 foreclosure plaintiffs but optional for the owners, who may
 1039 decline to exercise their right to a conciliation conference or
 1040 mediation. The fact that lenders and owners have engaged in
 1041 prefiling discussions does not exempt lenders from complying
 1042 with this section. Also, in the initial letter to the owner or
 1043 borrower, a lender who is a plaintiff must include a list of all
 1044 documents required and necessary for the lender to determine

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 1045 whether the borrower qualifies for a loan modification with such
 1046 lender. Mediation or a conciliation conference is not required
 1047 if the homestead owner fails to notify the plaintiff of the
 1048 right to conduct a mediation or conciliation conference.

1049 (a) In all actions to foreclose on mortgages on residential
 1050 properties that have filed for homestead exemption, or in cases
 1051 in which the homestead status of the property is unknown or in
 1052 doubt, the plaintiff must file with the complaint, and attach to
 1053 the summons, a "Notice to Homeowners Facing Foreclosure."
 1054 Parties shall require the notice to accompany the summons to be
 1055 served upon each defendant and must advise recipients of the
 1056 availability of a mediation or conciliation conference. The
 1057 requirement that the notice be attached to all summons in
 1058 residential foreclosure filings or where the homestead status is
 1059 unknown is to ensure that a homestead owner is not inadvertently
 1060 overlooked. The notice may be in substantially the following
 1061 form and must include the information contained in the following
 1062 form:

1063
 1064 NOTICE TO HOMEOWNERS FACING FORECLOSURE

1065
 1066 Owners of homestead properties facing foreclosure are
 1067 eligible to participate in a Foreclosure Conciliation
 1068 Conference (FCC) or Mediation to ascertain whether
 1069 they qualify for a loan modification with the
 1070 Lender/Plaintiff in this case or for settlement
 1071 purposes. The features of the FCC or Mediation are as
 1072 follows:

1073 1. This is voluntary for homestead owners. To

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 1074 qualify, you must have filed for the Florida homestead
 1075 exemption with the county property appraiser on the
 1076 subject property on or before the date the foreclosure
 1077 case was filed with the clerk of the court. This
 1078 option is not available to renters or to nonhomestead
 1079 owners.

1080 2. Lenders who file suit seeking to foreclose
 1081 liens on homestead property are required by s. 702.12,
 1082 Florida Statutes, to contact you and to invite you to
 1083 participate in at least one mandatory Conciliation
 1084 Telephone Conference or Mediation before the case can
 1085 be concluded. The purpose of the Conciliation
 1086 Telephone Conference or Mediation is for you to have
 1087 an open and frank discussion about the alleged default
 1088 and to consider alternatives to foreclosure. These may
 1089 include such things as refinancing, partial
 1090 forgiveness of debt, transferring title to qualified
 1091 third parties, clarifying the amount required to
 1092 reinstate or pay off the loan, deeds in lieu of
 1093 foreclosure, protecting the property pending transfer
 1094 of title, and establishing a mutually agreeable date
 1095 for relinquishing possession. Communications between
 1096 the parties and discussions during the conciliation
 1097 conference are NOT confidential and may be referred to
 1098 in future court proceedings. Communications between
 1099 the parties at a mediation are confidential and must
 1100 follow applicable law related to mediations.

1101 3. The Conciliation Telephone Conference will
 1102 occur as soon as possible after you receive this

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1103 notice. Although your lender should attempt to contact
 1104 you to schedule a mutually convenient date for the
 1105 conference or mediation, to avoid miscommunication, if
 1106 you wish to take advantage of the program, you should
 1107 promptly provide the attorney filing the complaint
 1108 with a letter stating your current contact
 1109 information. Include your e-mail addresses and
 1110 telephone numbers. Enclose a copy of this notice with
 1111 your letter. However, this option is for the benefit
 1112 of the homeowner, and you may decline to participate
 1113 at any time. If you choose not to respond to this
 1114 notice or to the lender's invitation to participate in
 1115 a Conciliation Telephone Conference or Mediation,
 1116 litigation will proceed in the normal course.

1117 4. There are three ways to participate in the
 1118 Conciliation Telephone Conference or Mediation: by
 1119 yourself, by hiring your own lawyer, or, if you
 1120 qualify, by a volunteer attorney's assistance. Your
 1121 lender may require you to sign legal papers confirming
 1122 any understanding or agreement you may reach. Make
 1123 sure you read and understand all documents before
 1124 signing. If you do not have an attorney, it is
 1125 recommended that you hire a member of The Florida Bar
 1126 to review the documents before signing. If no
 1127 agreement is reached, the case will proceed in due
 1128 course to its conclusion.

1129 5. You may qualify for a volunteer attorney to be
 1130 present with you during the Conciliation Telephone
 1131 Conference or Mediation. Call The Florida Bar or legal

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1132 aid programs in your area to determine whether you are
 1133 eligible for this pro bono (free) service. These
 1134 attorneys are volunteering their time as a public
 1135 service to assist in your discussions with the lender.
 1136 You will not be charged for their time and advice.
 1137 However, you must agree to appear in person on time
 1138 for the Conciliation Telephone Conference or Mediation
 1139 and be willing to communicate with your attorney and
 1140 participate in good faith in your discussions with
 1141 lenders. The attorney may withdraw from assisting you
 1142 at any time if you fail to comply with these
 1143 requirements. Private communications between you and
 1144 the pro bono attorney are confidential.

1145 IMPORTANT: Notice of limited legal representation.-The
 1146 volunteer attorney assisting you in the Conciliation
 1147 Telephone Conference or Mediation may limit his or her
 1148 services to discussions with the lender and assisting
 1149 you in exploring realistic alternatives to
 1150 foreclosure. Unless specifically agreed to by the pro
 1151 bono attorney in writing, he or she is NOT
 1152 representing you for any other purpose in the case and
 1153 will NOT be filing any papers or pleadings in your
 1154 case. YOU HAVE TWENTY (20) DAYS AFTER SERVICE OF THE
 1155 SUMMONS AND COMPLAINT IN WHICH TO FILE YOUR OWN ANSWER
 1156 OR RESPONSE IN THIS CASE. Unless you hire an attorney,
 1157 it is YOUR responsibility to file the proper papers to
 1158 prevent a default from being entered and to fully
 1159 represent your legal interests.
 1160

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1161
 1162 (b) An action to foreclose homestead properties may not be
 1163 scheduled for summary judgment or final hearing in this state
 1164 until a Conciliation Telephone Conference or Mediation is
 1165 conducted or attempted between lenders and owners and an
 1166 Attorney's Certificate of Compliance with this requirement has
 1167 been filed with the clerk of the court. If the owners cannot be
 1168 located, or if they fail to notify the plaintiff of or fail to
 1169 make themselves available for conferences or mediations, this
 1170 fact shall be noted on the Attorney's Certificate of Compliance,
 1171 in which instance the action may proceed to disposition. The
 1172 assigned judges shall monitor the case files for compliance with
 1173 this requirement and may cancel summary judgment hearings in
 1174 which an Attorney's Certificate of Compliance has not been
 1175 filed. The Attorney's Certificate of Compliance may be in
 1176 substantially the following form and must include the
 1177 information contained in the following form:

1178
 1179 IN THE JUDICIAL CIRCUIT OF FLORIDA
 1180 IN AND FOR COUNTY

1181 ...(plaintiffs)...
 1182 vs. ...(defendants)..., Case No.

1183
 1184 Attorney's Certificate of Compliance With
 1185 Sec. 6.12, Florida Statutes

1186
 1187 NOTE: This form is required in foreclosure cases filed against
 1188 homestead property and must be filed with the clerk of the court
 1189 at the time the summary judgment hearing is scheduled.

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

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1190
 1191 The undersigned attorney certifies to the court as follows:
 1192 1. A Conciliation Telephone Conference was attempted but
 1193 did not occur because:
 1194 a. Mortgagors did not respond to the Notice to Homeowners
 1195 Facing Foreclosure attached to the summons and complaint.
 1196 b. Mortgagors expressed no interest in the conference or
 1197 declined.
 1198 c. Mortgagors responded to the Notice to Homeowners Facing
 1199 Foreclosure but failed to attend the Conference.
 1200 d. Other:
 1201 2. The Conference occurred but an agreement was not
 1202 possible.
 1203 3. The Conference occurred and agreement on some issues was
 1204 reached, but deadlines set for performance or conditions were
 1205 not met or have expired.
 1206 4. The Conference occurred and all issues between the
 1207 parties have been resolved. This case will be dismissed on or
 1208 before ...(date)....
 1209 5. Other:
 1210 6. A Mediation was attempted but did not occur because:
 1211 a. Mortgagors did not respond to the Notice to Homeowners
 1212 Facing Foreclosure attached to the summons and complaint.
 1213 b. Mortgagors expressed no interest in Mediation or
 1214 declined.
 1215 c. Mortgagors responded to Notice to Homeowners Facing
 1216 Foreclosure but failed to attend the Mediation.
 1217 d. Other:
 1218 7. The Mediation occurred but ended in impasse.

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

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1219 8. The Mediation occurred and all issues between the
 1220 parties have been resolved. This case will be dismissed on or
 1221 before ... (date)....

1222 9. Other:

1223

1224 Dated this day of, 20 .

1225

1226 ... (signature) ... / ... (printed name) ... ; Bar No.

1227 Attorney for ... (name) ... / E-mail: ; Telephone:

1228

1229 cc: All parties

1230

1231 FILE THIS ORIGINAL DOCUMENT WITH THE CLERK OF THE COURT.

1232

1233 (c) The following requirements and procedures apply to the
 1234 Conciliation Telephone Conference:

1235 1. Responsibility for determining that the subject property
 1236 is a homestead and for scheduling the Conciliation Telephone
 1237 Conference shall be the affirmative duty of the lender or the
 1238 lender's counsel. The conference shall occur as soon as possible
 1239 after the case is filed, but no later than 90 days after notice
 1240 to the lender from the borrower of the borrower's intent to
 1241 exercise the borrower's right to conciliation conference.

1242 2. A list of all documents required by the lender to review
 1243 from the borrower shall be submitted to the borrower pursuant to
 1244 this subsection with the service of the initial complaint. After
 1245 notification to the plaintiff by the borrower or defendant that
 1246 he or she wishes to participate in a conciliation conference, an
 1247 updated list of documents, if any, required to be reviewed by

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1248 the plaintiff or lender shall be delivered to the borrower or
 1249 defendant. The borrower or defendant must produce the documents
 1250 required by the lender at least 14 days before the conciliation
 1251 conference to provide the lender adequate time to review the
 1252 borrower's financial documents and determine a suitable
 1253 alternative to foreclosure, if one exists, before the
 1254 conference.

1255 3. At the Conciliation Telephone Conference, the lender
 1256 shall arrange for the participation of knowledgeable persons,
 1257 including attorneys, loss mitigation staff, and others who can
 1258 confirm the amount and type of default and who are authorized to
 1259 make binding commitments regarding alternatives to litigation,
 1260 including refinancing, partial forgiveness of debt, approving
 1261 sales to third parties, clarifying the amount required to
 1262 reinstate or discharge the loan, requesting deeds in lieu of
 1263 foreclosure, implementing procedures for the protection of the
 1264 premises, and establishing a mutually agreeable date for
 1265 relinquishing possession.

1266 4. If consensus is reached in conference on one or more
 1267 issues, the affected parties shall set a deadline for the
 1268 completion or occurrence of all conditions or actions. The terms
 1269 of the consensus shall be reviewed in conference and promptly
 1270 memorialized in writing by the lender with a copy provided to
 1271 the owner. However, actions, conditions, or events agreed to by
 1272 the parties shall occur or be completed within 45 days after the
 1273 date of the conference at which the consensus was reached,
 1274 unless the parties agree in writing to an earlier date. The date
 1275 set for compliance or action shall be a firm deadline, unless
 1276 the completion or occurrence date is extended in writing with

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1277 the consent of both parties and confirmed by court order.

1278 5. Upon the timely performance of the agreed-upon
 1279 conditions or events, counsel for the lender shall file an
 1280 Attorney's Certificate of Compliance with the clerk of the court
 1281 advising the court that litigation is ready to resume or that
 1282 the case is being voluntarily dismissed. In those instances in
 1283 which a deadline has been set, the Attorney's Certificate of
 1284 Compliance may not be filed until all conditions have been
 1285 performed or the time for their performance has expired. If
 1286 consensus is not reached in conference, or if the owners have
 1287 declined to participate in the conference or do not respond to
 1288 the Notice to Homeowners Facing Foreclosure attached to the
 1289 summons and complaint, the Attorney's Certificate of Compliance
 1290 may be filed and the case shall proceed to disposition.

1291 6. The parties shall participate in the Conciliation
 1292 Telephone Conference in good faith, conducting themselves in a
 1293 civil and respectful manner.

1294 (d) The following requirements and procedures apply to
 1295 Mediation:

1296 1. Responsibility for determining that the subject property
 1297 is a homestead and for scheduling the Mediation shall be the
 1298 affirmative duty of the lender or the lender's counsel.
 1299 Mediation shall occur as soon as possible after the case is
 1300 filed, but no later than 90 days after notice to the lender from
 1301 the borrower of the borrower's intent to exercise the borrower's
 1302 right to Mediation.

1303 2. A list of all documents required by the lender to review
 1304 from the borrower shall be submitted to the borrower pursuant to
 1305 this subsection with the service of the initial complaint. After

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1306 notification to the plaintiff by the borrower or defendant that
 1307 he or she wishes to participate in Mediation, an updated list of
 1308 documents, if any, required to be reviewed by the plaintiff or
 1309 lender shall be delivered to the borrower or defendant. The
 1310 borrower or defendant must produce the documents required by the
 1311 lender at least 14 days before Mediation to provide the lender
 1312 adequate time to review the borrower's financial documents and
 1313 determine a suitable alternative to foreclosure, if one exists,
 1314 before Mediation.

1315 3. At Mediation, the lender shall arrange for the
 1316 participation of knowledgeable persons, including attorneys,
 1317 loss mitigation staff, and others who can confirm the amount and
 1318 type of default and who are authorized to make binding
 1319 commitments regarding alternatives to litigation, including
 1320 refinancing, partial forgiveness of debt, approving sales to
 1321 third parties, clarifying the amount required to reinstate or
 1322 discharge the loan, requesting deeds in lieu of foreclosure,
 1323 implementing procedures for the protection of the premises, and
 1324 establishing a mutually agreeable date for relinquishing
 1325 possession.

1326 4. After completion of Mediation, counsel for the lender
 1327 shall file an Attorney's Certificate of Compliance with the
 1328 clerk of the court advising the court that litigation is ready
 1329 to resume or that the case is being voluntarily dismissed. If
 1330 the Mediation results in an impasse, or if the owners have
 1331 declined to participate in the Mediation or do not respond to
 1332 the Notice to Homeowners Facing Foreclosure attached to the
 1333 summons and complaint, the Attorney's Certificate of Compliance
 1334 may be filed and the case shall proceed to disposition.

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1335 5. The parties shall participate in Mediation in good
1336 faith, conducting themselves in a civil and respectful manner.

1337 Section 18. Section 702.15, Florida Statutes, is created to
1338 read:

1339 702.15 Rental of property in foreclosure process.—The owner
1340 or landlord, as defined in chapter 83, of property that is in
1341 the foreclosure process may not rent the property without giving
1342 full notice and disclosure to the tenants or prospective tenants
1343 that the property is in the legal process of foreclosure.
1344 Failure to do so is actionable under ss. 501.201-501.213. The
1345 process of foreclosure includes the time in which the plaintiff
1346 files a foreclosure complaint until certificate of title is
1347 issued to the new owner after a final judgment of foreclosure.

1348 Section 19. Section 702.16, Florida Statutes, is created to
1349 read:

1350 702.16 Required documents to accompany complaint at initial
1351 filing.—Contemporaneously with the filing of the initial
1352 complaint for foreclosure, the plaintiff must file the necessary
1353 documents to support an entry of summary judgment, including,
1354 but not limited to, the original note, or a lost note affidavit,
1355 each mortgage, assignments of all mortgages and notes, and any
1356 other documents required for the court to ascertain the owner
1357 and holder of each note and mortgage on the property.

1358 Section 20. This act is intended to be remedial in nature
1359 and applies to any action filed on or after the effective date
1360 of this act.

1361 Section 21. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/1912
Meeting Date

Topic Fake closure

Bill Number 1890
(if applicable)

Name Rev Charlie Banks

Amendment Barcode _____
(if applicable)

Job Title Pastor

Address 409 Base wood Lane
Street

Phone _____

Altamonte Springs 32701
City State Zip

E-mail pastorbanks@ymail.com

Speaking: For Against Information

Representing Reco United 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/20/2012
Meeting Date

Topic Mortgage Foreclosure

Bill Number SB 1890
(if applicable)

Name Deb Lilley

Amendment Barcode 696168
(if applicable)

Job Title Bookkeeper / Office Admn

Address _____

Phone (941)467-5388

Street

Port Charlotte FL

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Myself & citizens 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic SBI 890 Mortgage Foreclosure

Bill Number 1890
(if applicable)

Name Ronald Gillis

Amendment Barcode 696168
(if applicable)

Job Title _____

Address PO Box 380842

Phone 941-766-8279

Street

Murdock

City

FL

State

33938

Zip

E-mail ~~ron~~gillisron123@hotmail.com

Speaking: For Against Information

Representing Myself & All Floridians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12
Meeting Date

Topic MORTGAGE FORECLOSURE

Bill Number S B 1890
(if applicable)

Name William Proctor

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 4125 LAKE LAWNE AVE
Street
ORLANDO FLA 32808
City State Zip

Phone 407 666 9162

E-mail _____

Speaking: For Against Information

Representing FOCUS - FEDERATION OF GENERATIONS UNITED TO SERVE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-2012
Meeting Date

Topic MORTGAGE Foreclosure Proceedings Bill Number 1890
(if applicable)

Name Yeline Goin Amendment Barcode _____
(if applicable)

Job Title Executive Director, Atty

Address 204 S. Monroe Street, Ste. 203 Phone 850-284-2460
Street

Tallahassee FL 32301
City State Zip

E-mail Ygoin@Becker-Poliakoff.com

Speaking: For Against Information

Representing CALL (Community Association Leadership Lobby)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic Mortgage Foreclosure

Bill Number SB1890

(if applicable)

Name Frank Pitt

Amendment Barcode 696108

(if applicable)

Job Title _____

Address 2842 Galindo Cir.

Phone 321-622-4144

Street

Melbourne

FL

32940

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Foreclosure

Bill Number 1890
(if applicable)

Name Alice Vickers

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 623 Beard St.

Phone 850 556-3121

Tallahassee, FL 32303
City State Zip

E-mail alice@fcan.org

Speaking: For Against Information

Representing Florida Consumer Action Network

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Foreclosure Bill Number 1890
Name Lynn Drysdale Amendment Barcode _____ (if applicable)
Job Title Managing Attorney - Consumer Unit
Address 126 W. Adams St. Phone 904 356-8371, 306
Jacksonville, FL 32202 E-mail lynn.drysdale@jaxlegalaid.org
City State Zip

Speaking: For Against Information

Representing Jacksonville Area Legal Aid

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic FAIR FORECLOSURE ACT

Bill Number SB 1890
(if applicable)

Name WOODY S. RYAN

Amendment Barcode _____
(if applicable)

Job Title N/A

Address 1675 FORTUNA STREET

Phone 239-253-4802

Street

SARASOTA

FLORIDA

34239

City

State

Zip

E-mail PATRICK.HONNY@6300.COMCAST.NET

Speaking: For Against Information

Representing CONCERNED CITIZEN + MEMBER OF MORTGAGE JUSTICE GROUP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic FAIR FORECLOSURE ACT OF 2012 Bill Number SB 1090

Name WOODY S. RYAN Amendment Barcode 696168
(if applicable)

Job Title N/A

Address 1675 FORTUNA ST. SARASOTA FL 34239 Phone 239-253-4802

Street
SARASOTA FL 34239 E-mail PATRICKHENRY63@COMCAST.NET
City State Zip

Speaking: For Against Information

Representing CONCERNED CITIZEN AND MEMBER OF MORTGAGE JUSTICE GROUP

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Fair Foreclosure Act

Bill Number SB1890
(if applicable)

Name Linda Shaffer

Amendment Barcode _____
(if applicable)

Job Title NA

Address 847 Hampton Wood Ct.

Phone 941 377-9930

Street

Sarasota FL 34232

City

State

Zip

E-mail euphoriazone@aol.com

Speaking: For Against Information

Representing concerned citizen & member of Foreclosure Coalition

Appearing at request of Chair: Yes No

GOOPS

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Fair Foreclosure Act

Bill Number SB 1890
(if applicable)

Name Linda Shaffer

Amendment Barcode 696168
(if applicable)

Job Title NA

Address 847 Hampton Wood Ct.
Street

Phone 941 3779930

Sarasota FL 34232
City State Zip

E-mail euphoriazone@
aol.com

Speaking: For Against Information

Representing self & member of Foreclosure Coalition Groups

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 1890
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 20, 2010
Meeting Date

Topic Foreclosure

Bill Number SB 1890

Name Larry Hendricks

Amendment Barcode 691168
(if applicable)

Job Title _____

Address 406 Alpha Ave
Street

Phone 778-6640

Tallahassee, FL 32305
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 20, 2010
Meeting Date

Topic Forecloser

Bill Number SB 1890
(if applicable)

Name Larry Hendricks

Amendment Barcode _____
(if applicable)

Job Title _____

Address 406 Alpha Ave
Street

Phone 778-6640

Tallahassee FL 32305
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Foreclosure Bill
Name Anthony DiMarco
Job Title EVP

Bill Number SB ~~1890~~ 1890
(if applicable)
Amendment Barcode _____
(if applicable)

Address 1081 Thomaville Rd
Street
Wellchere FL 32303
City State Zip

Phone 224-2245
E-mail adimarco@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Assoc.

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12
Meeting Date

Topic Support the bill

Bill Number 1890
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO BOX 10095
Street

Phone 850-222-3533

Tallahassee FL 32302
City State Zip

E-mail martha@penningtonlaw.com

Waive Speaking: For Against Information

Support the bill as amended

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

0The 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 Judiciary Committee

BILL: CS/SB 1686

INTRODUCER: Judiciary Committee and Senator Fasano

SUBJECT: Effect of Crimes

DATE: February 22, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.			CJ	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill expands on the “barring the killer receiving benefits” doctrine under s. 732.802, F.S., by prohibiting a person from receiving:

- Alimony if the person was convicted of an enumerated offense (first or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense) against a divorcing spouse or family member of the divorcing spouse and the crime results in the death of or creates a substantial risk of death or serious injury to the victim.
- An equitable distribution of marital assets and liabilities in a divorce proceeding if the person was convicted of an offense involving an attempt or conspiracy to murder the divorcing spouse.

The bill conforms, in part, to the Uniform Probate Code § 2-114 by:

- Providing that a parent who is convicted of criminally abusing, abandoning, neglecting, or sexually abusing his or her minor child loses his or her right to the intestate succession in any part of the child’s estate and all rights to administer the estate of the child.

- Providing that if the parent is disqualified from taking a distributive share in the decedent's estate, the decedent child's estate must be distributed as if the parent had predeceased the decedent.

This bill amends sections 61.075 and 61.08, Florida Statutes.

This bill creates section 732.8025, Florida Statutes.

II. Present Situation:

Equitable Distribution and Alimony

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. Under s. 61.075, F.S., a court must distribute the marital assets and liabilities of the parties based on the premise that the distribution be equal.¹ The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S.

The relevant factors a court must consider in determining whether to make an unequal distribution of marital assets and liabilities include:

- a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
- b) The economic circumstances of the parties.
- c) The duration of the marriage.
- d) Any interruption of personal careers or educational opportunities of either party.
- e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.
- h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
- i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.
- j) Any other factors necessary to do equity and justice between the parties.²

¹ Section 61.075(1), F.S.

² Section 61.075(1), F.S.

Although a court may consider “other factors necessary to do equity and justice between the parties” in dividing the marital assets and liabilities, the court is not expressly required to consider criminal acts perpetrated by one spouse upon another.

In determining whether to award alimony in a divorce proceeding, a court may “consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.”³ However, if the court determines that one party has a need for alimony and the other party has the ability to pay, the court in determining the type or amount of alimony must consider:

- a) The standard of living established during the marriage.
- b) The duration of the marriage.
- c) The age and the physical and emotional condition of each party.
- d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- g) The responsibilities each party will have with regard to any minor children they have in common.
- h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- j) Any other factor necessary to do equity and justice between the parties.⁴

Although a court must consider “any other factor necessary to do equity and justice between the parties” in determining the type or amount of alimony, the court is not expressly required to consider criminal acts perpetrated by one spouse upon another. Moreover, the words of the statute appear to confine the court’s analysis to examining the needs of one spouse for alimony and the ability of the other spouse to pay.

Killer Not Entitled to Receive Property or Other Benefits By Reason of Victim’s Death

A surviving person who unlawfully and intentionally kills or participates in procuring the death of a decedent is not entitled to any benefits under a will or through intestacy under the Florida Probate Code. In such situations, the estate of the decedent passes as if the killer had predeceased the decedent.⁵ A named beneficiary of a bond, life insurance policy, or other contractual arrangements who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond or policy becomes payable as though the killer had

³ Section 61.08(1), F.S.

⁴ Section 61.08(2), F.S.

⁵ Section 732.802 (1), F.S.

predeceased the decedent.⁶ A final judgment of conviction of murder of any degree is conclusive. In the absence of a conviction of murder, the court may determine by the greater weight of the evidence whether the killing of the decedent was unlawful and intentional.⁷

Uniform Probate Code Section 2-114

The Uniform Probate Code is not binding on Florida but specifies general rules that bar intestate succession of parents under certain circumstances.

A parent is barred from inheriting from or through a child of the parent if:

- (1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or
- (2) the child died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting this under [Section 2-114 of the Uniform Probate Code] is treated as if the parent predeceased the child.⁸

Termination of Parental Rights and Inheritance Rights under Intestacy

Chapter 39, F.S., generally authorizes the termination of parental rights for abuse, abandonment, or neglect.⁹ The chapter does not specifically address whether an intestate estate of a child whose parents had their parental rights terminated may take an intestate share of the child's estate. A minor may not legally disinherit a parent whose parental rights have been terminated.¹⁰ This appears to result from requirements that a person be at least 18 years of age to make a will.

Chapters 731 through 735, F.S., are known as the "Florida Probate Code."¹¹ Substantive rights regarding probate are covered in the probate code and procedural matters are governed by probate rules adopted by the Florida Supreme Court. Chapter 732, F.S., governs substantive issues relating to wills.

Any property of decedent that is not disposed of by his or her will passes to his heirs by intestate succession.¹² In general, the laws of intestacy are a default for situations when a decedent has failed to or may not make a will. The laws of intestacy attempt to duplicate the dispositive scheme that the decedent would have wanted if he or she had affirmatively left a valid will.

⁶ Section 732.802 (3), F.S.

⁷ Section 732.802 (5), F.S.

⁸ Uniform Probate Code § 2-114 Parent Barred From Inheriting in Certain Circumstances.

⁹ See ss. 39.801 – 39.815, F.S.

¹⁰ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Section 732.1081, [F.S.,] Addressing Inheritance Rights of Parents Whose Parental Rights Have Been Terminated* (2010) (on file with the Senate Committee on Judiciary).

¹¹ Section 731.005, F.S.

¹² Section 732.101(1), F.S.

Section 732.108, F.S., provides requirements for the intestate succession by or from an adopted person. If a child is adopted under the requirements of ch. 63, F.S., then s. 732.108, F.S., provides that for the purposes of intestate succession for the termination of inheritance rights of the natural parents in favor of the adoptive parent or parents. If the child is not legally adopted, for purposes of intestate succession, the inheritance rights of the natural parent whose parental rights have been legally terminated continue to remain.

Under the probate code, a child who becomes 18 and who otherwise meets the requirements to make a will may do so, and may elect whether or not to include a parent whose parental rights have been terminated.

III. Effect of Proposed Changes:

Prohibition on Equitable Distribution and Alimony

The bill provides that if a spouse is convicted of an offense involving an attempt or conspiracy to murder the other spouse, a court may not make an equitable distribution of property to such spouse.

The bill provides a list of criminal offenses and conditions that preclude a spouse from receiving alimony. Specifically, a person convicted of first degree or second degree murder, manslaughter, DUI manslaughter,¹³ BUI manslaughter,¹⁴ aggravated assault, or a substantially similar offense under the laws of another jurisdiction may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ of a *family member of a divorcing party*. The bill defines family member, for purposes of the section, as a spouse, child, parent, or sibling. The family member can be related to the individual by blood, marriage, or adoption to qualify as a family member.

Bar to Intestate Succession for Parent who Abused, Abandoned or Neglected Minor Child

The bill conforms to the Uniform Probate Code § 2-114 which bars parents from inheriting from their children in certain circumstances. The bill provides that a parent loses his or her right to intestate succession in any part of the child's estate and all rights to administer the estate of the child, if he or she is convicted of specified crimes committed against the child:

- Abuse, abandonment, or neglect pursuant to s. 39.01, F.S.;
- A violation of s. 827.03 (relating to abuse); or
- Sexual abuse as defined in s. 39.01, F.S.

A parent who has been convicted of one of the enumerated crimes loses his or her right to inherit from the child's estate and the right to administer the child's estate, unless a court determines that the parent and child had subsequently reconciled and the parent-child relationship was restored.

¹³ Driving under the influence manslaughter causing the death any human being or unborn quick child. *See* s. 316.193(3)(c) 3., F.S.

¹⁴ Boating under the influence manslaughter causing the death any human being. *See* s. 327.35(3)(c)3., F.S.

If the parent is disqualified from taking a distributive share in the decedent's estate under the bill, the decedent's estate must be distributed as though the parent had predeceased the decedent.

The bill provides an effective date of July 1, 2012.

Other Potential Implications:

Senate Bill 988 contains a comparable provision which creates s. 732.1081, F.S., to amend the Florida Probate code to bar inheritance through intestate succession by a parent from a child in cases when the natural or adoptive parent's parental rights were terminated pursuant to ch. 39, F.S., prior to the death of the child. In such cases, the natural or adoptive parent must be treated as if the parent predeceased the child. Senate Bill 988 is now on the calendar.

The Uniform Probate Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar believes "that it would be appropriate for Florida law to bar inheritance by a parent whose parental rights have been terminated."¹⁵

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:

Persons who commit the enumerated crimes in the bill will be barred from receiving an equitable distribution of marital assets and liabilities or alimony in a divorce proceeding and will be barred from inheriting from their child's estate, as appropriate.

¹⁵Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Section 732.1081, [F.S.] Addressing Inheritance Rights of Parents Whose Parental Rights Have Been Terminated* (2010) (on file with the Senate Committee on Judiciary).

C. **Government Sector Impact:**

The Office of State Courts Administrator reports that the office does not anticipate a significant impact on the judicial or court workload from the bill's requirements.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

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

CS by Judiciary on February 20, 2012:

For the limitation on the award of alimony in the bill, the list of individuals who qualified under the definition of family member is narrowed to a spouse, child, parent, or sibling. The bill requires the conviction of an offense, rather than that the commission of the offense in order to prohibit a parent from inheriting a child's estate through intestate succession or administering the child's estate. If a court determines that the parent and child had subsequently reconciled and the parent-child relationship was restored, the prohibition on the parent's inheritance or administration of the child's estate no longer applies. Additionally, the bill removes the prohibition of a half brother or sister of the decedent child from taking a distributive share in the decedent child's estate if the child's parent was disqualified.

B. **Amendments:**

None.



490170

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 52
and insert:
a family member of a divorcing party. For purposes of this sub-
subparagraph, the term "family member" means a spouse, child,
parent, or sibling, whether the individual

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

And the title is amended as follows:

Delete line 8
and insert:



490170

13
14

after a marriage from receiving alimony; defining the
term "family member"; creating s.



771872

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 65 - 77
and insert:

(1) A parent who is convicted of abusing, abandoning, or neglecting a minor child as defined in s. 39.01, committing a violation of s. 827.03 against the child, or sexually abusing the minor child as defined in s. 39.01, shall lose all right to the intestate succession in any part of the child's estate and all rights to administer the estate of the child, unless a court determines that the parent and child had subsequently reconciled and the parent-child relationship was restored.

(2) If a parent is disqualified from taking a distributive



771872

14 share in the decedent's estate under this section, the
15 decedent's estate shall be distributed as though the parent had
16 predeceased the decedent.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete lines 9 - 12

21 and insert:

22 732.8025, F.S.; providing that a parent who is
23 convicted of specified offenses against a minor child
24 shall lose all right to the intestate succession in
25 the child's estate and all right to administer the
26 estate; providing an exception if a court determines
27 that the parent-child relationship was subsequently
28 restored;

By Senator Fasano

11-01491-12

20121686__

1 A bill to be entitled
 2 An act relating to effects of crimes; amending s.
 3 61.075, F.S.; providing that a court may not make an
 4 equitable distribution of property in a dissolution of
 5 marriage to a party convicted of certain offenses
 6 concerning the other party; amending s. 61.08, F.S.;
 7 prohibiting persons convicted of specified crimes
 8 after a marriage from receiving alimony; creating s.
 9 732.8025, F.S.; providing that a parent who commits
 10 specified offenses against a minor child shall lose
 11 all right to the intestate succession in the child's
 12 estate and all right to administer the estate;
 13 providing for distribution of that share of the
 14 estate; providing an effective date.

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

16 Section 1. Subsection (12) is added to section 61.075,
 17 Florida Statutes, to read:

18 61.075 Equitable distribution of marital assets and
 19 liabilities.—

20 (12) The court may not make an equitable distribution of
 21 property to a party convicted of an offense involving an attempt
 22 or conspiracy to murder the other party.

23 Section 2. Subsection (1) of section 61.08, Florida
 24 Statutes, is amended to read:

25 61.08 Alimony.—

26 (1)(a) In a proceeding for dissolution of marriage, the
 27 court may grant alimony to either party, which alimony may be
 28
 29

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

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30 bridge-the-gap, rehabilitative, durational, or permanent in
 31 nature or any combination of these forms of alimony.

32 (b) In any award of alimony, the court may order periodic
 33 payments or payments in lump sum or both.

34 (c) The court may consider the adultery of either spouse
 35 and the circumstances thereof in determining the amount of
 36 alimony, if any, to be awarded.

37 (d)1. A person convicted, as defined in s. 944.606, of
 38 first degree or second degree murder in violation of s. 782.04,
 39 manslaughter in violation of s. 782.07, DUI manslaughter in
 40 violation of s. 316.193(3)(c)3., BUI manslaughter in violation
 41 of s. 327.35(3)(c)3., aggravated assault in violation of s.
 42 784.021, or a substantially similar offense under the laws of
 43 another jurisdiction may not receive alimony if:

44 a. The crime results in death or creates a substantial risk
 45 of death or serious personal disfigurement, or protracted loss
 46 or impairment of the function of any bodily member or organ, of
 47 a family member of a divorcing party. For purposes of this sub-
 48 paragraph, the term "family member" means a spouse, child,
 49 parent, sibling, aunt, uncle, niece, nephew, first cousin,
 50 grandparent, grandchild, father-in-law, mother-in-law, son-in-
 51 law, daughter-in-law, stepparent, stepchild, stepbrother,
 52 stepsister, half brother, or half sister, whether the individual
 53 is related by blood, marriage, or adoption; and

54 b. The crime was committed after the marriage.

55 2. A person convicted of an attempt or conspiracy to commit
 56 murder may not receive alimony from the person who was the
 57 intended victim of the attempt or conspiracy.

58 (e) In all dissolution actions, the court shall include

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

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59 findings of fact relative to the factors enumerated in
60 subsection (2) supporting an award or denial of alimony.

61 Section 3. Section 732.8025, Florida Statutes, is created
62 to read:

63 732.8025 Parental offenses against minor child; effect on
64 child's estate.—

65 (1) A parent who abused, abandoned, or neglected the minor
66 child as defined in s. 39.01, committed a violation of s. 827.03
67 against the child, or sexually abused the minor child as defined
68 in s. 39.01 shall lose all right to the intestate succession in
69 any part of the child's estate and all right to administer the
70 estate of the child.

71 (2) If a parent is disqualified from taking a distributive
72 share in the decedent's estate under this section, the
73 decedent's estate shall be distributed as though the parent had
74 predeceased the decedent.

75 (3) A sibling of the half blood of the decedent whose
76 parent is disqualified may not take a distributive share in the
77 decedent's estate.

78 Section 4. This act shall take effect July 1, 2012.

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 Judiciary Committee

BILL: SB 862

INTRODUCER: Senator Simmons

SUBJECT: Wage Protection for Employees

DATE: February 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.	White	Cibula	JU	Pre-meeting
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill expressly preempts the regulation of wage theft to the state. Therefore, local governments are prohibited from regulating wage theft. Under the bill, “wage theft” is defined as an illegal or improper underpayment or nonpayment of an individual worker’s wages, salaries, commissions, or other similar form of compensation.

This bill creates an undesignated section of law.

II. Present Situation:

Wage Theft

“Wage theft” is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Wage theft may occur if:

- An employee is paid below the state or federal minimum wage;
 - An employee is paid partial wages or not paid at all;
 - A non-exempt employee is not paid time and half for overtime hours;
 - An employee is required to work off the clock;
 - An employee has their time card altered;
 - An employee is misclassified as an independent contractor; or
 - An employee does not receive a final paycheck after the termination of employment.
- A variety of federal and state laws protect employees from wage theft including, but not limited to, the Fair Labor Standards Act (FLSA) and Florida’s minimum wage laws. An aggrieved

employee may also file a common law breach of contract claim in circuit court to enforce his or her right to wages.

Employee Protection: Federal and State

Both federal¹ and state laws provide protection to employees who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.

Federal Protection of Employees

Examples of federal laws, which the U.S. Department of Labor administers and enforces, include:

- **The Davis-Bacon and Related Acts²** - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act³** - Applies to federal or District of Columbia contracts in excess of \$2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- **The Migrant and Seasonal Agricultural Workers Protection Act⁴** - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and payment of wages owed when due.
- **The Contract Work Hours and Safety Standards Act⁵** - Applies to federal service contracts and federal and federally assisted construction contracts greater than \$100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act⁶** - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

¹ A list of federal laws that protect employees is located at: <http://www.dol.gov/compliance/laws/main.htm> (last visited January 27, 2012).

² 40 U.S.C. ss. 3141-48 (the Davis-Bacon Act has also been extended to approximately 60 other acts).

³ 41 U.S.C. ss. 351-58.

⁴ 29 U.S.C. ss. 1801-72.

⁵ 40 U.S.C. ss. 3701-08.

⁶ 40 U.S.C. s. 276c; 18 U.S.C. s. 874.

Fair Labor Standards Act

The FLSA⁷ establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime hours worked. The FLSA establishes standards for minimum wages,⁸ overtime pay,⁹ recordkeeping,¹⁰ and child labor.¹¹ The FLSA applies to most classes of workers.¹²

The FLSA provides that:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.¹³

Thus, if a nonexempt employee works more than 40 hours in a week, then the employer must pay at least time and half for those hours over 40. A failure to pay a nonexempt employee is a violation of the FLSA.¹⁴ The FLSA also establishes a federal minimum wage in the United States.¹⁵ The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum but not lower.¹⁶

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;¹⁷
- Criminal prosecutions by the United States Department of Justice;¹⁸ or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.¹⁹

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee for the amount of the unpaid wages and liquidated

⁷ 29 U.S.C. ch. 8.

⁸ 29 U.S.C. s. 206.

⁹ 29 U.S.C. s. 207.

¹⁰ 29 U.S.C. s. 211.

¹¹ 29 U.S.C. s. 212.

¹² The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Feb. 16, 2012).

¹³ 29 U.S.C. s. 207(a)(1).

¹⁴ There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Feb. 16, 2012).

¹⁵ 29 U.S.C. s. 206.

¹⁶ 29 U.S.C. s. 218(a).

¹⁷ 29 U.S.C. s. 216(c).

¹⁸ 29 U.S.C. s. 216(a).

¹⁹ 29 U.S.C. s. 216(b).

damages equal to the amount of the unpaid wages.²⁰ An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.²¹

State Protection of Employees

State law provides for protection of employees, including anti-discrimination,²² work safety,²³ and a state minimum wage. Since 2004, the state minimum wage has been established by the Florida Constitution.²⁴ Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."

If an employer does not pay the state minimum wage, the constitution provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld.²⁵ If the employee prevails, in addition to the unpaid wages, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs.²⁶ Further, any employer that willfully violates the minimum wage law is fined \$1,000 for each violation.²⁷ The Attorney General is also empowered to bring a civil action to enforce the state's minimum wage laws.²⁸

The current state minimum wage is \$7.67 per hour, which is the federal rate.²⁹ Federal law requires the payment of the higher of the federal or state minimum wage.³⁰

Chapter 448, F.S., includes the State Minimum Wage Act, which implements the constitutional provision in Article X, s. 24. It also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.³¹

An employee may bring a common law breach of contract claim for unpaid wages too, and s. 448.08, F.S., allows the court to award attorney's fees and costs if the employee prevails.

Home Rule and Preemption

Article VIII, ss. 1 and 2, of the State Constitution establishes two types of local governments: counties³² and municipalities. Local governments have wide authority to enact various

²⁰ 29 U.S.C. §216(b).

²¹ *Id.*

²² Section 760.10, F.S.

²³ Sections 448.20-26 and 487.2011-2071, F.S.

²⁴ Art. X, s. 24, Fla. Const.

²⁵ Art. X, s. 24(e), Fla. Const.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited Feb. 16, 2012).

³⁰ 29 U.S.C. §218(a).

³¹ Section 448.105, F.S.

³² Florida has both charter and non-charter counties.

ordinances to accomplish their local needs.³³ Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject that has not been preempted to the state.

Preemption essentially takes a topic or field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the state.³⁴ Florida law recognizes two types of preemption: express and implied.³⁵ Express preemption requires a specific legislative statement and cannot be implied or inferred.³⁶ Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from a finding of preemption by implication, though courts are careful when imputing intent on behalf of the legislature to preclude a local government from using its home rule powers.³⁷ Before finding that implied preemption exists, a court will first consider whether the legislative scheme is so pervasive as to evidence intent to preempt the particular area.³⁸ Factors that point to a pervasive legislative scheme include the nature of the subject matter, the need for state uniformity, and the scope and purpose of the state legislation.³⁹ Second, a court will consider whether strong public policy reasons exist for finding an area to be preempted by the Legislature.⁴⁰ An example of an area where the courts have found implied preemption is the regulation of public records.⁴¹

There is no apparent express preemption of wage laws to the federal or state government. It is unclear whether a court would find that the existing laws regarding employee wages are an implied preemption of the subject.

Miami-Dade County Wage Theft Ordinance

In February of 2010, Miami-Dade County enacted an ordinance regulating wage theft.⁴² The ordinance is enforced by the county's Department of Small Business Development (SBD)⁴³ and provides a local process for employees to file claims for unpaid wages outside of the processes available under state and federal law.

Section 22-3 of the Miami Dade County Code states:

For any employer to fail to pay any portion of wages due to an employee,
according to the wage rate applicable to that employee, within a reasonable time

³³ Article VIII of the state constitution establishes the powers of charter counties, non-charter counties, and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.

³⁴ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³⁸ *See Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

³⁹ *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

⁴⁰ *Tallahassee Mem'l Reg'l Med. Ctr, Inc. v. Tallahassee Med. Ctr, Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

⁴¹ *See Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

⁴² Miami Dade County, Fla., Code ch. 22.

⁴³ Cynthia S. Hernandez, Research Institute on Social and Economic Policy, *Wage Theft in Florida: A Real Problem with Real Solutions* 3 (2010).

from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer.

Upon the filing of a complaint, the county determines if the complaint 1) alleges wage theft, 2) names at least one respondent, and 3) meets the threshold requirement of at least \$60 in unpaid wages.⁴⁴ If the complaint meets the initial criteria, the county serves the complaint and a written notice on the accused employer in an attempt to recover the funds.⁴⁵ The county tries to work with the parties to resolve the case either through the payment of the wages or a conciliation agreement, however, if the dispute cannot be settled, the case is referred to a hearing examiner.⁴⁶ The hearing examiner has the authority to administer oaths, issue subpoenas, compel the production of and receive evidence.⁴⁷ At the hearing, parties may proceed with discovery, submit evidence, cross-examine witnesses, and obtain the issuance of subpoenas.⁴⁸ The hearing examiner's final order is subject to appeal in a court of competent jurisdiction.⁴⁹ From the inception of the ordinance through January 6, 2012, the Department of Small Business Development reports that there have been a total of 1596 wage complaints, claims, or inquiries logged, resulting in a total of \$813,369.71 awarded to claimants.⁵⁰

Proponents of the Miami-Dade County wage theft ordinance argue that the ordinance:

- Allows employees to have the case decided by a hearing officer, avoiding potentially lengthy and expensive court processes, unless appealed.⁵¹
- Provides a simpler process for employees who are often unaware of the federal and state remedies available, including undocumented workers, who often fear deportation, and thus are reluctant to file a complaint with the U.S. Department of Labor;⁵²
- Covers all employees in Miami-Dade County, including the many employees not covered by the Fair Labor Standards Act.⁵³

⁴⁴ Miami-Dade County, Fla., Code s. 22-4(2)(a).

⁴⁵ Miami-Dade County, Fla., Code s. 22-4(2)(b). The county might also first make a phone call to the employer in an attempt to resolve the issue before serving a complaint.

⁴⁶ Miami-Dade County, Fla., Code s. 22-4(6)(a). The wage theft ordinance and implementing order (IO) do not expressly provide qualifications for hearing examiners, however, Miami-Dade's SBD has relied on the hearing examiner qualifications from another implementing order (IO 3-24, relating to responsible wages and benefits for county construction contracts) in selecting hearing examiners for the wage theft ordinance. IO 3-24 can be found at <http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-24.pdf> (last accessed January 27, 2012). The hearing examiner qualifications are found on p. 14.

⁴⁷ Miami-Dade County Code of Ordinances, s. 22-4(7).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Department of Small Business Development, *Wage Theft Status Report* (Jan. 2012) (on file with the Senate Committee on Judiciary).

⁵¹ Michael Peltier, *Wage Theft Bill Advances Despite No Agreement*, WCTV, Jan. 23, 2012.

⁵² See Dave Jamieson, "Wage Theft: Business Interests Try To Scuttle New Worker Laws," The Huffington Post, Sep. 5, 2011, http://www.huffingtonpost.com/2011/07/06/wage-theft-business-workers-laws_n_891578.html (last visited January 27, 2012).

Opponents of the Miami-Dade County wage theft ordinance argue that the ordinance:

- Creates a burdensome business environment by establishing the foundation for a statewide patchwork of various additional regulations that businesses are forced to learn and comply with.⁵⁴
- Is largely unnecessary given the adequacy of existing remedies for employees, and does not discourage frivolous or unfounded claims.⁵⁵
- Is unconstitutional, in that it is void of many of the due process protections present in state and federal laws, and provides no finality.⁵⁶

Legal Challenge

In August of 2010, the Florida Retail Federation filed suit to challenge the constitutionality of the Miami-Dade County ordinance.⁵⁷ The Florida Retail Federation alleged in its complaint that the ordinance violates due process, separation of powers, right to jury trial, prohibition on local governments creating courts, and that the ordinance is preempted by federal and state law.⁵⁸ The litigation is still ongoing with a ruling on a motion to dismiss and motion for summary judgment expected soon.

Palm Beach County

Palm Beach County has also addressed the issue of wage theft locally through a pilot program involving the Palm Beach County Legal Aid Society (Legal Aid).⁵⁹ The process established by Legal Aid is similar to the process established by the Miami-Dade County ordinance, but instead of a hearing examiner reviewing the claims, Legal Aid refers cases to attorneys who represent employees pro bono in filing a claim in civil court or with the U.S. Department of Labor.⁶⁰ The process relies on volunteers and does not require county resources. Between February 2, 2011,

⁵³ Cynthia S. Hernandez, Research Institute on Social and Economic Policy, *Wage Theft in Florida: A Real Problem with Real Solutions* 3 (2010) (“a large percentage of the region’s [South Florida] workers are not covered under the Fair Labor Standards Act because they work for an employer who employs less than five employees or whose business does not generate more than \$500,000 annually, leaving the U.S. Department of Labor Wage and Hour Division with no jurisdiction to protect these workers.”).

⁵⁴ Florida Retail Federation, *Wage Theft Preemption*, available at <http://www.frf.org/index.php/government-affairs/legislative-issues/frf-general/wage-theft-preemption> (last visited Feb. 16, 2012).

⁵⁵ *Id.* Under the ordinance, if an employer is found liable, it is forced to pay attorney’s fees and the cost of administering the complaint. However, if an employer is not found liable, the same standard does not apply to the employee who is not held responsible for attorney’s fees or costs.

⁵⁶ *Id.* Whether or not an employee prevails under the ordinance, it appears that he or she may still pursue the same claim in state or federal court.

⁵⁷ *Fla. Retail Federation, Inc. v. Miami-Dade County, Fla.*, Case No. 10-42326CA30 (11th Jud. Cir.).

⁵⁸ See Complaint for Declaratory and Injunctive Relief, *Fla. Retail Federation, Inc. v. Miami-Dade County, Fla.*, Case No. 10-42326CA30 (11th Jud. Cir. Aug. 4, 2010).

⁵⁹ See Legal Aid Society of Palm Beach County, Inc., *Wage Theft Brochure*, available at <http://www.legalaidpbc.org/assets/WageTheftBrochure.pdf> (last visited Jan. 27, 2012).

⁶⁰ Legal Aid Society of Palm Beach County, Inc., *Wage Theft Project Update* (June 20, 2011) (on file with the Senate Committee on Judiciary).

and June 20, 2011, Legal Aid retained 34 clients with wage theft complaints, and six of these clients went on to receive compensation from their employers.⁶¹

The Palm Beach County Commission has considered enacting a similar ordinance to Miami-Dade, but has reportedly postponed a final vote until March of 2012.⁶²

III. Effect of Proposed Changes:

Section 1 preempts to the state any wage theft ordinances or regulations. A county, municipality, or political subdivision of the state may not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft. This section defines “wage theft” as an illegal or improper underpayment or nonpayment of an individual worker’s wages, salaries, commissions, or other similar form of compensation.

Section 2 provides an effective date of July 1, 2012.

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:

The bill may prevent additional burdens on businesses by eliminating the possibility of a patchwork of wage theft regulations throughout Florida’s 67 counties and over 400 municipalities. The bill may make enforcement of wage theft claims by employees more costly.

C. Government Sector Impact:

None.

⁶¹ *Id.*

⁶² Jennifer Sorentue, *Palm Beach County commissioners table wage-theft law*, THE PALM BEACH POST, June 22, 2011.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.



105770

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) There is created a civil cause of action for
the collection of unpaid wages.

(2) The term:

(a) "Wages" means wages, salaries, commissions, or other
similar forms of compensation.

(b) "Unpaid wages" means the improper underpayment or
nonpayment of wages within a reasonable time after the date on
which the employee performed the work for which the wages are
compensable.



14 (3) An employer shall pay the wages due to an employee for
15 the work that the employee performed and which are due within a
16 reasonable time after the date on which the employee performed
17 the work. The employer shall pay the wages according to the
18 applicable rate and the employer's own pay schedule established
19 by policy or practice. If a pay schedule has not been
20 established, a reasonable time following the date on which that
21 employee performed the work is presumed to be 2 weeks.

22 (4) As a condition precedent to bringing a claim for unpaid
23 wages, the claimant shall notify in writing the employer alleged
24 to have violated this section of the employee's intent to
25 initiate a claim. The notice must identify the amount that the
26 claimant alleges he or she is owed, the actual or estimated work
27 dates and hours for which payment is sought, and the total
28 amount of alleged unpaid wages through the date of the notice.
29 The employer has 15 days following the date of service of the
30 notice to pay the total amount of unpaid wages or otherwise
31 resolve the claim to the satisfaction of the claimant.

32 (5) The claim shall have its venue in the county where the
33 work was performed or where the employer resides. A claim for
34 unpaid wages shall be tried before the court and not before a
35 jury. The claimant does not have a right to a class action to
36 enforce such unpaid wage claims.

37 (6) A claim for unpaid wages under this section must be
38 filed within 1 year following the last date that the allegedly
39 unpaid work was performed by the employee.

40 (7) A prevailing claimant is entitled to damages, which
41 shall be the actual wages due and owing, plus court costs and
42 interest.



105770

43 (8) (a) A county, municipality, or political subdivision may
44 establish an administrative, nonjudicial complaint process by
45 which an unpaid wage claim may be filed by, or on behalf of, an
46 aggrieved employee in order to assist in the collection of wages
47 owed to the employee. Any such process shall afford the parties
48 involved an opportunity to negotiate a resolution to the wages
49 in question.

50 (b) A county, municipality, or political subdivision may
51 not adopt or maintain in effect any law, ordinance, or rule that
52 creates requirements or regulations for the purpose of
53 addressing unpaid wage claims other than to establish the
54 administrative process provided for in this section.

55 (c) Any other regulation, ordinance, or provision for the
56 recovery of unpaid wages by a county, municipality, or political
57 subdivision is expressly prohibited and is preempted to the
58 state.

59 (9) This section does not apply to an employer whose annual
60 gross volume of sales is more than \$500,000, exclusive of sales
61 tax collected or excise taxes paid.

62 Section 2. This act shall take effect July 1, 2012.

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete everything before the enacting clause
67 and insert:

68 A bill to be entitled
69 An act relating to wage protection for employees;
70 creating a civil cause of action for the collection of
71 unpaid wages; defining terms; requiring an employer to



72 pay the wages due to an employee for the work that the
73 employee performed within a reasonable time after the
74 date on which the employee performed the work;
75 requiring a claimant, as a condition precedent to
76 bringing a claim for unpaid wages, to notify in
77 writing the employer of the employee's intention to
78 initiate a claim; providing for the content of the
79 notice; allotting the employer a specific time to pay
80 the total amount of unpaid wages or otherwise resolve
81 the claim to the satisfaction of the claimant;
82 providing for the venue of such claims; prohibiting
83 the maintenance of a class action; providing for
84 damages to include court costs and interest;
85 authorizing a county, municipality, or political
86 subdivision to establish an administrative,
87 nonjudicial process by which a claim may be filed by,
88 or on behalf of, an aggrieved employee; prohibiting a
89 county, municipality, or political subdivision from
90 adopting or maintaining in effect a law, ordinance, or
91 rule for the purpose of addressing unpaid wage claims
92 other than to establish an administrative process as
93 provided in the act; providing that any regulation,
94 ordinance, or other provision for recovery of unpaid
95 wages by counties, municipalities, or political
96 subdivisions is prohibited and preempted to the state;
97 providing a limitation of applicability to certain
98 employers; providing an effective date.

By Senator Simmons

22-00451C-12

2012862__

1 A bill to be entitled
2 An act relating to wage protection for employees;
3 prohibiting a county, municipality, or political
4 subdivision from adopting or maintaining in effect a
5 law, ordinance, or rule that creates requirements,
6 regulations, or processes for the purpose of
7 addressing wage theft; preempting such activities to
8 the state; defining the term "wage theft"; providing
9 an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. (1) A county, municipality, or political
14 subdivision of the state may not adopt or maintain in effect any
15 law, ordinance, or rule that creates requirements, regulations,
16 or processes for the purpose of addressing wage theft. The
17 regulation of wage theft by counties, municipalities, or
18 political subdivisions is expressly preempted to the state.

19 (2) As used in this section, the term "wage theft" means an
20 illegal or improper underpayment or nonpayment of an individual
21 worker's wages, salaries, commissions, or other similar form of
22 compensation.

23 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic WAGE PROTECTION

Bill Number SB 862
(if applicable)

Name DR. DEBORAH S. WRIGHT

Amendment Barcode _____
(if applicable)

Job Title TEACHER

Address 815 N. W. 2nd ST

Phone 561-715-0837

DEERAY BCH FL
Street City State Zip

E-mail deborah.wright@palmbeachsecuris.org

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02-20-12

Meeting Date

Topic Wage Theft

Bill Number 862
(if applicable)

Name Jeanette Smith

Amendment Barcode _____
(if applicable)

Job Title South Florida Interfaith Worker Justice

Address 150 SW 13 Ave

Phone 305 598 1404

Street

Miami, FL 33135

City

State

Zip

E-mail jeanette.smith@sfwj.org

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Wage theft

Bill Number 862
(if applicable)

Name Karen Woodall

Amendment Barcode _____
(if applicable)

Job Title _____

Address 545 E. Tennessee St.

Phone 850-321-9386

Street

Tallahassee FL 32301

City

State

Zip

E-mail kwtally@aol.com

Speaking: For Against Information

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12
Meeting Date

Topic Wage Theft

Bill Number 5B 862
(if applicable)

Name Barbara Delane

Amendment Barcode _____
(if applicable)

Job Title independent contractor

Address 425 E. Broadway St
Street
Tallahassee FL 32308
City State Zip

Phone 850-222-3969

E-mail barbandelane1@

Speaking: For Against Information

Representing FL NOW (National Organization for Women)
Yahoo.com

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic Wage Protection

Bill Number 862
(if applicable)

Name Richard Turner

Amendment Barcode _____
(if applicable)

Job Title V.P. Government Relations FRLA

Address 230 S. Adams St
Street

Phone 850-224-2250

Tallahassee FL 32302
City *State* *Zip*

E-mail rturner@frla.org

Speaking: For Against Information

Representing Florida Restaurant & Lodging 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012

Meeting Date

Topic _____

Bill Number 862
(if applicable)

Name Leticia M Adams

Amendment Barcode _____
(if applicable)

Job Title Director of Infrastructure & Governance Policy

Address 136 South Bronough Street
Street

Phone 850-544-6866

Tallahassee FL 32301
City *State* *Zip*

E-mail ladams@flchamber.com

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

20 Feb 2012

Meeting Date

Topic UMax Theft

Bill Number SB 862
(if applicable)

Name John Rogers

Amendment Barcode _____
(if applicable)

Job Title Sen. V. Pt. General Counsel

Address 227 S. Adams

Phone 850 / 222-4082

City Tallahassee State FL Zip 32301

E-mail John@frf.org

Speaking: For Against Information

Representing Fla. 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Wage Protection

Bill Number 862
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Fla. Associated General Contractors

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic wage theft

Bill Number 862
(if applicable)

Name Rich Templin

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2038 Wakahaw Avenue
Street
Tallahassee FL 32301
City State Zip

Phone 850-224-6926

E-mail _____

Speaking: For Against Information

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

2-20-12

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

Meeting Date

Topic _____

Bill Number 862
(if applicable)

Name JESS MCCARTY

Amendment Barcode _____
(if applicable)

Job Title ASS'T COUNTY ATTY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street

MIAMI

FL 33128

E-mail JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: For Against Information

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012
Meeting Date

Topic WAGE TAFT

Bill Number S 862
(if applicable)

Name ANDRES TRUJILLO

Amendment Barcode _____
(if applicable)

Job Title FLORIDA LEGISLATIVE DIRECTOR U.T.U.

Address 1141 NW 77th WAY.
Street
Pembroke Pines FL 33024
City State Zip

Phone 786-348-5771

E-mail _____

Speaking: For Against Information

Representing UNITED TRANSPORTATION UNION.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-12

Meeting Date

Topic

Wage Theft

Bill Number

SB 862

(if applicable)

Name

KARI HERBANK

Amendment Barcode

(if applicable)

Job Title

Address

120 S. MONROE ST.

Street

Phone

850-566-7824

TALLAHASSEE, FL 32301

City

State

Zip

E-mail

Kari@vambaconsulting.com

Speaking:

For

Against

Information

Representing

SIMPSON STRAP-TIE

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012
Meeting Date

Topic _____

Bill Number 862
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12

Meeting Date

Topic Wage Protection

Bill Number SB 862
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title VP - External Relations

Address 516 W. Adams St

Phone 850-226-7173

Street

Tallahassee FL 32301

City

State

Zip

E-mail bbevis@atf.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2012
Meeting Date

Topic WAGE PROTECTION

Bill Number 862
(if applicable)

Name GAIL MARIE FERRY

Amendment Barcode _____
(if applicable)

Job Title _____

Address Po Box 1766
Street
Pompano Beach FLA 33061
City State Zip

Phone 954 850 4055

E-mail gmfp52@hotmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2-20-2012

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

Meeting Date

Topic Wage Theft

Bill Number SB 862 (if applicable)

Name Stephen Sarnoff

Amendment Barcode (if applicable)

Job Title Municipal worker

Address 2886 Catherine Dr

Phone 727-798-5228

Street Clearwater FL 33759

E-mail cwa3179@verizon.net

City State Zip

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

Representing self

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic Wage Theft Protection

Bill Number SB 862
(if applicable)

Name Karen Zaremba

Amendment Barcode _____
(if applicable)

Job Title Teacher

Address 3871 Island Club Cir
Street

Phone (561) 704-9254

Lantana Fl. 33462
City State Zip

E-mail KZAREM@ADL.COM

Speaking: For Against Information

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 20, 2012
Meeting Date

Topic WAGE Theft

Bill Number 0862
(if applicable)

Name Wille Bailey

Amendment Barcode _____
(if applicable)

Job Title CITIZEN

Address 8681 N.W 3rd street

Phone 305-903-7811

Hollywood Fl. 33024
City State Zip

E-mail bailey.wille@bellstate

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02-20-2012

Meeting Date

Topic Wage Protection

Bill Number 862
(if applicable)

Name Joseph Tate

Amendment Barcode _____
(if applicable)

Job Title Retiree

Address 5973 Copper Creek Dr.

Phone 904-765-3746

Street

Jacksonville

FL

32218

City

State

Zip

E-mail 904-673-8526

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/12
Meeting Date

Topic Wage Theft

Bill Number 862
(if applicable)

Name GLYNDA LINTON

Amendment Barcode _____
(if applicable)

Job Title AUTHOR

Address 1 SW 58 Ave

Phone 954 648-5571

Plantation FL 33317
City State Zip

E-mail glynda-linton@yahoo.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/12
Meeting Date

Topic Wage Loss Bill Number 862
(if applicable)

Name Richard Watson Amendment Barcode _____
(if applicable)

Job Title Legis Counsel

Address P.O. Box 10038 Phone 850 222-0000
Street

Tallahassee FL 32302 E-mail rick@thatground
City State Zip associated.com

Speaking: For Against Information

Representing Associated Builders and Contractors

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.

CourtSmart Tag Report

Room: EL 110

Caption: Senate Judiciary Committee

Case:

Judge:

Type:

Started: 2/20/2012 10:52:43 AM

Ends: 2/20/2012 1:00:49 PM

Length: 02:08:07

10:52:48 AM Meeting Called to Order
10:53:35 AM CS/SJR 1056 by Senator Norman
10:55:19 AM Brian Pitts representing Justice 2 Jesus
10:56:45 AM CS/SJR 1056 Roll Call
10:56:59 AM CS/SJR 1056 - Favorable
10:57:55 AM CS/SB 1058 by Senator Norman
10:59:08 AM Brian Pitts representing Justice 2 Jesus
11:00:07 AM CS/SB 1058 Roll Call
11:00:19 AM CS/SB 1058 - Favorable
11:00:39 AM CS/SB 808 by Senator Norman
11:03:47 AM Brian Pitts representing Justice 2 Jesus
11:05:27 AM Paul Jess representing FL. Justice Assoc.
11:09:41 AM CS/SB 808 Roll Call
11:09:52 AM CS/SB 808 - Favorable
11:10:23 AM CS/SB 1276 by Senator Latvala
11:11:51 AM CS/SB 1276 Roll Call
11:11:58 AM CS/SB 1276 - Favorable
11:12:26 AM SB 1890 by Senator Latvala
11:32:09 AM Deb Lilley representing self
11:33:31 AM Ronald Gillis representing self
11:37:13 AM William Proctor representing FOCUS
11:38:46 AM Yelin Goin representing CALL (Community Assoc. Leadership Lobby)
11:39:44 AM Rev. Charlie Banks representing self
11:41:53 AM Frank Pitt representing self
11:43:15 AM Alice Vickers representing FL. Consumer Action Network
11:49:00 AM Lynn Drysdale representing Jacksonville Area Legal Aid
11:54:57 AM Woody Ryan representing self
11:59:56 AM Linda Shaffer representing self
12:03:34 PM Brian Pitts representing Justice 2 Jesus
12:07:25 PM Larry Hendricks representing self
12:10:08 PM Anthony DiMarco representing FL. Bankers Assoc.
12:31:48 PM SB 1890 Roll Call
12:32:51 PM SB 1890 - Favorable as a CS
12:33:15 PM SJR 1508 by Senator Montford
12:35:26 PM Brian Pitts representing Justice 2 Jesus
12:38:17 PM SJR 1508 Roll Call
12:39:18 PM SJR 1508 - Favorable as a CS
12:39:42 PM CS/SB 646 by Senator Wise
12:43:26 PM Steve Chaires representing Advanced Storage
12:44:17 PM CS/SB 646 Roll Call
12:44:27 PM CS/SB 646 - Favorable as a CS
12:44:49 PM CS/SB 1874 by Senator Wise
12:48:21 PM Brian Pitts representing Justice 2 Jesus
12:49:56 PM CS/SB 1874 Roll Call
12:50:14 PM CS/SB 1874 - Favorable as a CS
12:50:24 PM CS/SB 680 by Senator Bogdanoff
12:52:35 PM CS/SB 680 Roll Call
12:52:49 PM CS/SB 680 - Favorable as a CS
12:53:08 PM CS/SB 1686 by Senator Fasano
12:54:41 PM CS/SB 1686 Roll Call
12:55:17 PM CS/SB 1686 - Favorable as a CS
12:55:43 PM SB 862 by Senator Simmons

12:59:37 PM Meeting Adjourned by Chair