

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Thompson, Vice Chair

MEETING DATE: Tuesday, March 25, 2014
TIME: 2:00 —5:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1678 Governmental Oversight and Accountability (Similar H 7143)	OGSR/Agency Personnel Information; Amending provisions which provide an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances, etc. CA 03/25/2014 Favorable RC	Favorable Yeas 9 Nays 0
2	SJR 1256 Garcia (Similar HJR 1081)	Miami-Dade County Home Rule Charter; Proposing an amendment to the State Constitution to authorize amendments or revisions to the Miami-Dade County Home Rule Charter by a special law approved by the electors of Miami-Dade County; restricting the introduction of a bill proposing such a special law; providing that the charter may impose fixed term limits on county commissioners, etc. CA 03/25/2014 Favorable JU RC	Favorable Yeas 5 Nays 3
3	SB 640 Braynon (Similar H 531)	Public Health Trusts; Authorizing public health trusts to lease certain real property, etc. HP 03/11/2014 Favorable CA 03/25/2014 Favorable AHS AP	Favorable Yeas 8 Nays 0

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Community Affairs

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 956 Environmental Preservation and Conservation / Bean (Similar CS/H 791)	Coastal Management; Authorizing the Department of Environmental Protection to grant areawide permits for certain structures; requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for certain purposes; authorizing the department to grant privileges or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands provided certain conditions are met, etc. EP 03/13/2014 Fav/CS CA 03/25/2014 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
5	SB 1172 Sobel (Similar H 1311)	Conveyance of Property Taken by Eminent Domain; Authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity, etc. CA 03/25/2014 Favorable JU RC	Favorable Yeas 9 Nays 0
6	CS/SB 974 Transportation / Abruzzo (Similar CS/H 617)	Towing of Vehicles and Vessels; Authorizing an owner or lessee of real property to have a vehicle or vessel removed from the property without certain signage if the vehicle or vessel has remained on the property for a specified period; providing that the specified period does not begin until a certain notice is physically attached to the vehicle or vessel; providing requirements for the notice, etc. TR 03/13/2014 Fav/CS CA 03/25/2014 Temporarily Postponed	Temporarily Postponed
7	SB 470 Detert (Compare H 283, CS/CS/H 387, H 1329, H 7075, CS/S 406)	Malt Beverages; Removing the prohibition on beer samplings at the premises of certain vendors; authorizing malt beverage tastings upon certain licensed premises, etc. RI 01/16/2014 Favorable CA 03/25/2014 Fav/CS AP RC	Fav/CS Yeas 8 Nays 0

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Community Affairs

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1240 Margolis (Similar H 1167)	Public Records/Personal Financial Statement/Contract Bidding; Revising an exemption from public records requirements for a financial statement that a governmental entity or agency requires a person to submit in order to respond to a competitive solicitation or as a term or condition of a contract; providing exceptions; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CA 03/25/2014 Favorable GO RC	Favorable Yeas 8 Nays 1
9	CS/SB 900 Education / Latvala (Similar CS/H 541, Compare CS/H 543, Link CS/S 1396)	Public-private Partnerships; Providing legislative findings and intent relating to the construction or improvement by private entities of facilities or projects used predominantly for a public purpose; providing for partnerships between state universities and private entities; providing procurement procedures for a state university board of trustees, including proposals for a qualifying project and a comprehensive agreement for partnership transactions; providing for various financing sources for projects, etc. ED 03/11/2014 Fav/CS CA 03/25/2014 Fav/CS AED AP	Fav/CS Yeas 9 Nays 0
10	SB 1532 Bradley (Compare H 5305)	Juvenile Detention Costs; Revising the responsibilities of specified counties and the state relating to financial support for juvenile detention care; requiring the Department of Juvenile Justice to provide specified information to specified counties, etc. CA 03/25/2014 Temporarily Postponed AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 828 Judiciary / Bradley (Similar CS/H 7003)	Court System; Repealing provisions relating to a prohibition on the practice of law by a retired justice of the Supreme Court; repealing provisions relating to the appointment and duties of a Clerk of the Supreme Court; repealing provisions relating to compensation of the Marshal of the Supreme Court; excluding retired judges practicing law from the Conference of Circuit Judges of Florida; removing a requirement that circuit court judges attend and participate in such conference; revising the number of members of the Judicial Qualifications Commission to conform to requirements of the State Constitution; repealing provisions relating to an evidentiary rule regarding evidence of title to land passing from the United States, etc. JU 03/11/2014 Fav/CS CA 03/25/2014 Favorable RC	Favorable Yeas 9 Nays 0

12	CS/SB 1450 Regulated Industries / Simpson	Homeowners' Association Meetings; Requiring meetings to be held at locations accessible to physically handicapped persons, etc. RI 03/13/2014 Fav/CS CA 03/25/2014 Favorable	Favorable Yeas 9 Nays 0
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Executive Director, Department of Economic Opportunity			
13	Panuccio, Jesse (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1678

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Agency Personnel Information

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>GO SPB 7080 as introduced</u>
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1678 reenacts the existing public records exemption for former and current agency employees' Social Security numbers under s. 119.071(4)(a), F.S. This bill provides that an agency may disclose an employee's Social Security number if required by law, a court order, if another agency needs the Social Security number in order to perform its duties, or if an employee consents to the release of his or her Social Security number. This bill eliminates the sunset date of the exemption, thus continuing the current public records exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

Section 119.15, F.S., provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁶

In addition to finding the exemption serves one of the above purposes, the Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption.

The Act also requires specified questions to be considered during the review process.¹⁷

When reenacting an exemption that will otherwise be repealed, a public necessity statement and a two-thirds vote are required for passage if the exemption is expanded.¹⁸ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁹ to the exemption is created.²⁰

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

¹⁸ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁰ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

Exemption Under Review: Agency Personnel Social Security Numbers

Section 119.071(4)(a), F.S., provides that the Social Security numbers of all current and former agency employees are confidential and exempt from public disclosure under s. 119.071(1), F.S., and s. 24, Art. 1 of the Florida Constitution. Section 119.071(4)(a), F.S., currently does not contain any means for agencies to disclose employee Social Security numbers.²¹ This exemption will stand repealed on October 2, 2014, unless saved from repeal by the Legislature.

Review Findings and Recommendations

On August 16, 2013, the Senate Governmental Oversight and Accountability Committee and the House Government Oversight Subcommittee surveyed state agencies regarding the need to keep agency personnel Social Security numbers exempt from public disclosure under s. 119.071(4)(a), F.S. Twenty-five agencies responded, and all of the agencies stated that s. 119.071(4)(a), F.S., should not be repealed. Several agencies cited the potential for identity theft and criminal activity as the rationale for keeping employees' Social Security numbers exempt from public disclosure. Agencies reported that they currently release Social Security numbers to government entities in order to perform background checks, to process payroll information, or if their employees are the subject of criminal investigations. None of the agencies reported that this exemption had been the subject of litigation.

III. Effect of Proposed Changes:

Section 1 provides agencies the ability to keep employee Social Security numbers confidential and exempt from public disclosure while permitting employing agencies to release Social Security numbers when necessary.

The bill clarifies the law by incorporating provisions for release within s. 119.071(4)(a), F.S. Agencies will be permitted to release employee Social Security numbers under the following conditions: as required by state or federal law or court order; to another agency or governmental entity when it is necessary for the receiving agency or entity to perform its duties; and when an employee gives his or her written consent.

The bill removes the October 2, 2014, repeal date of this public records exemption.

Section 2 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ Agencies can use s. 119.071(5), F.S., when disclosure is required.

B. Public Records/Open Meetings Issues:

This bill does not expand or create a public records exemption and therefore it is not subject to the Open Government Sunset Review Act, s. 119.15, F.S. This bill requires a simple majority vote for passage.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements
 5 for social security numbers of current and former
 6 agency employees held by an employing agency; saving
 7 the exemption from repeal under the Open Government
 8 Sunset Review Act; authorizing an employing agency to
 9 disclose the social security number of a current or
 10 former agency employee under certain circumstances;
 11 providing an effective date.

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

14
 15 Section 1. Paragraph (a) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:

17 119.071 General exemptions from inspection or copying of
 18 public records.—

19 (4) AGENCY PERSONNEL INFORMATION.—

20 (a) 1. The social security numbers of all current and former
 21 agency employees which ~~numbers~~ are held by the employing agency
 22 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 23 I of the State Constitution.

24 2. The social security numbers of current and former agency
 25 employees may be disclosed by the employing agency:

26 a. If disclosure of the social security number is expressly
 27 required by federal or state law or a court order.

28 b. To another agency or governmental entity if disclosure
 29 of the social security number is necessary for the receiving

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30 agency or entity to perform its duties and responsibilities.

31 c. If the current or former agency employee expressly
32 consents in writing to the disclosure of his or her social
33 security number ~~This paragraph is subject to the Open Government~~
34 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
35 ~~repealed on October 2, 2014, unless reviewed and saved from~~
36 ~~repeal through reenactment by the Legislature.~~

37 Section 2. This act shall take effect October 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SJR 1256

INTRODUCER: Senator Garcia

SUBJECT: Miami-Dade County Home Rule Charter

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SJR 1256 proposes an amendment to the Florida Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by a special law approved by a vote of the electors in that county, and provides requirements for a bill proposing such a special law. This joint resolution also authorizes the Miami-Dade charter to provide for fixed term limits for Miami-Dade County Commissioners.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

This joint resolution amends Art. VIII, s. 6 of the Florida Constitution.

II. Present Situation:

Counties

Article VIII, s. 1 of the Florida Constitution requires the state to be divided into political subdivisions known as counties which shall provide state services at the local level. There are two types of counties that are recognized under the Florida Constitution: non-charter counties and charter counties.¹

Non-Charter Counties

Non-charter county governments only have such powers of self-government as is provided by general or special law.² In addition, non-charter counties may enact ordinances not inconsistent

¹ See FLA. CONST. art. VIII, s. 1(f)-(g).

² FLA. CONST. art. VIII, s. 1(f).

with general or special law.³ A county ordinance in a non-charter county that is in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.⁴

Charter Counties

Charter counties have greater powers of self-government than non-charter counties. Counties operating under a charter have all powers of self-government not inconsistent with general law or with special law approved by the vote of the electorate.⁵ In a charter county, the charter must provide which prevails in the event of a conflict between county and municipal ordinances.⁶ Once a charter has been adopted by the electors of a county it may only be amended by those same electors.⁷

Miami-Dade Home Rule Charter⁸

In 1955, the voters of Dade County were authorized by the Legislature under an amendment to Art. VIII, s. 11, of the 1885 Florida Constitution to enact the first home rule charter in Florida.

Article VIII, s. 6(e), of the Florida Constitution, states that the provisions of the Metropolitan Dade (or Miami-Dade) County Home Rule Charter adopted by the electors of Miami-Dade County pursuant to Art. VIII, s. 11 of the Constitution of 1885 are valid and any subsequent amendments to the charter, authorized by Art. VIII, s. 11 of the Constitution of 1885, are authorized.⁹

Unique Powers

Article VIII, s. 11 of the Constitution of 1885 granted the electors of Miami-Dade County the authority to adopt a home rule charter government in Miami-Dade County of which the Board of County Commissioners of Miami-Dade County is the governing body. In contrast to charter governments created pursuant to Art. VIII, s. 1(g) of the State Constitution, Miami-Dade County is granted unique powers that include:

- Merging, consolidating, abolishing and changing the boundaries of municipal, county or district governments whose jurisdictions lie wholly within Miami-Dade County;
- Providing a method for establishing new municipal corporations, special taxing units, and other governmental units in Miami-Dade County;
- Providing an exclusive method for municipal corporations to make, amend, or repeal their own charters, which, once adopted, cannot be changed or repealed by the Legislature;

³ *Id.*

⁴ *Id.*

⁵ FLA. CONST. art. VIII, s. 1(g).

⁶ *Id.*

⁷

⁸ Section 125.011(1), F.S., defines the term “county” to mean: any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county. The constitutional sections that are contained in s. 125.011(1), F.S., refer to Key West/Monroe County, Miami-Dade County and Hillsborough County, respectively.

⁹ FLA. CONST. art. VIII, s. 6(e).

- Abolishing the offices of sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court and providing for the consolidation and transfer of their functions; and
- Changing the name of the county.

In addition, even though Art. VIII, s. 11(5), of the Florida Constitution of 1885 does not limit or restrict the power of the Legislature to enact general laws that apply to Miami-Dade County and any one or more other counties in Florida or to any municipality in Miami-Dade County and one or more other municipalities in Florida, Miami-Dade County ordinances control in the event of conflict with a special or general law only applicable to Miami-Dade County. Hence, the Legislature is prevented by Art. VIII, s. 11(5), of the Florida Constitution of 1885, as amended, from enacting special laws that apply only to Miami-Dade County, even if such a special act were approved by referendum.

Special Provisions

Miami-Dade County Home Rule Charter (Charter) was officially adopted on May 21, 1957. The Charter authorizes the Board of County Commissioners to create new municipalities; change municipal boundaries; and to establish, merge, and abolish special purpose districts. The Charter also abolishes the constitutional office of the Sheriff and authorizes the Board of County Commissioners to “[e]xercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the state.”¹⁰

Court Interpretations

Florida courts have consistently invalidated the applicability of special acts passed by the Legislature that attempt to supersede the home rule powers of Miami-Dade County. The Florida Supreme Court has held that the constitutional provisions granting home rule authority to Miami-Dade County transferred to the county “the powers formerly vested in the state legislature with respect to the affairs, property and government of Dade County and all the municipalities within its territorial limits.”¹¹

In the case of *Chase v. Cowart*,¹² the Florida Supreme Court was asked to determine whether the Miami-Dade County Budget Commission had been abolished by the electors of Miami-Dade County through the enactment of its home rule charter. The budget commission was originally established by the Florida Legislature with authority over the fiscal affairs of county boards and county officers of Miami-Dade County and whose jurisdiction fell entirely within Miami-Dade County.

In deciding the issue, the Court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Art. VIII, of the Florida Constitution of 1885, as amended, which preserve to the Legislature the authority to enact general laws that apply to Miami-Dade County and any one or more other counties. The Court also analyzed subsection (1)(c), s. 11, Art. VIII, of the Florida Constitution of 1885, which provides an express grant of power authorizing the voters of Miami-Dade County

¹⁰ Article 1, s. 1.01(21), *Miami-Dade County Home Rule Charter*.

¹¹ *State v. Dade County*, 142 So. 2d 79, 85 (Fla. 1961) (citing *Chase v. Cowart*, 102 So. 2d 147 (Fla. 1958)).

¹² *Chase*, 102 So. 2d 147.

to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly within Miami-Dade County, whether created by the Constitution, the Legislature or otherwise.

After conducting its analysis, the Court held that the electors of Miami-Dade County, through the enactment of its home rule charter, abolished the budget commission. The court reasoned that the limitations of subsections (5) and (9) do not prohibit the abolishment of the budget commission because the charter provision allowing abolishment of the commission comes within the exception to the limitations of subsections (5) and (9) that states “except as expressly authorized herein.” Specifically stating that s. 11(1)(c) is:

clearly an express grant of power which authorizes the voters of Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly in Miami-Dade County, whether created by the Constitution or by the Legislature or otherwise. We think it crystal clear that the words ‘except as expressly authorized’ or ‘provided’ as found in subsections (5) and (9) relates directly to the specific grants of power contained in the various sub-subsections of subsection (1).¹³

The Court further stated that its reasoning did not weigh on the analysis of whether the law creating the budget commission was a general law, general law of local application, or a special act.

In *City of Sweetwater v. Dade County*,¹⁴ the Third District Court of Appeal held that general law provisions governing the annexation of land into municipalities did not apply within Miami-Dade County since municipal boundary change is “one of the areas of autonomy conferred on Dade County” by its Home Rule Charter.¹⁵ In reaching this holding, the appellate court upheld the trial court’s ruling, which relied on the autonomy granted to Miami-Dade County under Art. VIII, s. 11(1), of the Florida Constitution of 1885, as amended:

Subsections 1(a) through (i) of the Home Rule Charter Amendment constitute those organic areas of autonomy and authority in local affairs conferred upon Dade County by the Florida Constitution and may not be diminished and curtailed by general laws of the State enacted after 1956.¹⁶

Based on this information the Third District Court of Appeal determined “that the method provided by the Home Rule Charter... is effective and exclusive, notwithstanding the existence from time to time of a general state law which makes provision for some other method.”¹⁷

¹³ *Id.* at 152-53.

¹⁴ *City of Sweetwater v. Dade County*, 343 So. 2d 953 (Fla. 3rd DCA 1977).

¹⁵ *Id.* at 954.

¹⁶ *Id.* (citations omitted).

¹⁷ *Id.*

III. Effect of Proposed Changes:

The joint resolution will allow the Miami-Dade County Home Rule Charter to be amended or revised by a special law approved by the electors of Miami-Dade County, notwithstanding any provision of Art. VIII, s. 11, of the Florida Constitution of 1885. If such amendments or revisions are approved by the electors of Miami-Dade County, they shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County. A bill proposing such a special law must be filed by a member of the Miami-Dade County legislative delegation, and such filing must be approved by a majority of the members of the Miami-Dade County legislative delegation in each house of the Legislature.

The joint resolution also authorizes the Miami-Dade County charter to provide for fixed term limits of Miami-Dade County Commissioners.

The joint resolution conforms references in the Florida Constitution to reflect the county's current name, which is Miami-Dade County, not Dade County.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the electors at the 2014 General Election will take effect on January 6, 2015.¹⁸

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:

Constitutional Amendments

Section 1, Art. XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State 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.¹⁹

Section 5(d), Art. XI, of the Florida Constitution, requires the Division of Elections to advertise proposed constitutional amendments twice in a newspaper of general circulation

¹⁸ FLA. CONST. art. XI, s. 5(e).

¹⁹ FLA. CONST. art. XI, s. 5(a).

in each county before the election in which the amendment shall be submitted to the electors. Due to new federal regulations, the advertisements must now be provided in Spanish statewide (in addition to English). Because of this new requirement, the Division of Elections is unable to provide an accurate estimate for the cost to advertise at this time.

Section 5(e), Art. XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.²⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Upon voter approval, this joint resolution will allow Miami-Dade County home rule charter amendments or revisions to be made by special law approved by a vote of the electors. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation. This joint resolution will also authorize the Miami-Dade County charter to provide term limits for its county commissioners.

Each 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.²¹ Costs for advertising vary depending upon the length of the amendment. Due to new federal regulations, the advertisements must now be provided in Spanish statewide (in addition to English). Because of this new requirement, the Division of Elections is unable to provide an accurate estimate for the cost to advertise at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ *Id.*

²¹ FLA. CONST. art. XI, s. 5(d).

VIII. Statutes Affected:

This joint resolution substantially amends Article VIII, section 6 of the Florida Constitution

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Garcia

38-00208A-14

20141256__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VIII of the State Constitution to authorize amendments or revisions to the Miami-Dade County Home Rule Charter by a special law approved by the electors of Miami-Dade County; restricting the introduction of a bill proposing such a special law; providing that the charter may impose fixed term limits on county commissioners; conforming historical references to reflect the current name of Miami-Dade County.

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

That the following amendment to Section 6 of Article VIII 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 VIII

LOCAL GOVERNMENT

SECTION 6. Schedule to Article VIII.—

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of

38-00208A-14

20141256__

30 intoxicating liquors, wines and beers; the method of selection
31 of county officers; the performance of municipal functions by
32 county officers; the county seats; and the municipalities and
33 special districts of the state, their powers, jurisdiction and
34 government.

35 (c) OFFICERS TO CONTINUE IN OFFICE. Every person holding
36 office when this article becomes effective shall continue in
37 office for the remainder of the term if that office is not
38 abolished. If the office is abolished the incumbent shall be
39 paid adequate compensation, to be fixed by law, for the loss of
40 emoluments for the remainder of the term.

41 (d) ORDINANCES. Local laws relating only to unincorporated
42 areas of a county on the effective date of this article may be
43 amended or repealed by county ordinance.

44 (e) CONSOLIDATION AND HOME RULE. Article VIII, Sections 9,
45 10, 11 and 24, of the Constitution of 1885, as amended, shall
46 remain in full force and effect as to each county affected, as
47 if this article had not been adopted, until that county shall
48 expressly adopt a charter or home rule plan pursuant to this
49 article. All provisions of the Miami-Dade ~~Metropolitan Dade~~
50 County Home Rule Charter, heretofore or hereafter adopted by the
51 electors of Miami-Dade ~~Dade~~ County pursuant to Article VIII,
52 Section 11, of the Constitution of 1885, as amended, shall be
53 valid, and any amendments to such charter shall be valid;
54 provided that the said provisions of such charter and the said
55 amendments thereto are authorized under said Article VIII,
56 Section 11, of the Constitution of 1885, as amended. However,
57 notwithstanding any provision of Article VIII, Section 11, of
58 the Constitution of 1885, as amended, or any limitations under

38-00208A-14

20141256__

59 this subsection, the Miami-Dade County Home Rule Charter may be
 60 amended or revised by special law approved by the electors of
 61 Miami-Dade County and, if approved, shall be deemed an amendment
 62 or revision of the charter by the electors of Miami-Dade County.
 63 A bill proposing a special law to amend or revise the Miami-Dade
 64 County Home Rule Charter may be filed only by a member of the
 65 Miami-Dade County legislative delegation, and such filing must
 66 be approved by a majority of the members of the Miami-Dade
 67 County legislative delegation in each house of the legislature.
 68 The Miami-Dade County Home Rule Charter may provide for fixed
 69 term limits of Miami-Dade County Commissioners.

70 (f) MIAMI-DADE ~~DADE~~ COUNTY; POWERS CONFERRED UPON
 71 MUNICIPALITIES. To the extent not inconsistent with the powers
 72 of existing municipalities or general law, the Metropolitan
 73 Government of Miami-Dade ~~Dade~~ County may exercise all the powers
 74 conferred now or hereafter by general law upon municipalities.

75 (g) DELETION OF OBSOLETE SCHEDULE ITEMS. The legislature
 76 shall have power, by joint resolution, to delete from this
 77 article any subsection of this Section 6, including this
 78 subsection, when all events to which the subsection to be
 79 deleted is or could become applicable have occurred. A
 80 legislative determination of fact made as a basis for
 81 application of this subsection shall be subject to judicial
 82 review.

83 BE IT FURTHER RESOLVED that the following statement be
 84 placed on the ballot:

85 CONSTITUTIONAL AMENDMENT
 86 ARTICLE VIII, SECTION 6
 87 AUTHORIZING REVISIONS TO MIAMI-DADE COUNTY HOME RULE

38-00208A-14

20141256__

88 CHARTER BY SPECIAL LAW APPROVED BY REFERENDUM.—This proposed
89 amendment authorizes revisions or amendments to the Miami-Dade
90 County Home Rule Charter by a special law approved by the
91 electors of Miami-Dade County and requires that a bill proposing
92 such a special law be approved by the local legislative
93 delegation and filed by a member thereof.

94 It also provides that the charter may impose fixed term
95 limits for county commissioners and conforms historical
96 references to reflect the county's current name.

THE FLORIDA SENATE
APPEARANCE RECORD

3-25-14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic _____

Bill Number 1256
(if applicable)

Name JESS MCCARTY

Amendment Barcode _____
(if applicable)

Job Title ASST COUNTY AITY

Address 111 NW 15th St 2810

Phone 305-979-7110

Street
MIAMI 33128
City *State* *Zip*

E-mail JMM2@MIAMI.DDF
GOV

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.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures, Chair

SENATOR RENE GARCIA

38th District

March 7, 2014

The Honorable Wilton Simpson
Chair, Community Affairs
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

This letter should serve as a request to have my bill *SB 1256 Miami Dade Home Rule Charter* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38
RG:dm

CC: Tom Yeatman, Staff Director

REPLY TO:

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 640

INTRODUCER: Senator Braynon

SUBJECT: Public Health Trusts

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 640 authorizes the board of trustees of a public health trust to lease out office space without first advertising and soliciting bids for the office space.

II. Present Situation:

Limitations on Public Health Trusts' Authority to Lease Office Space

Chapter 73-102, Laws of Florida, authorized the governing body of each county to create a public health trust in and for the county. A public health trust's board of trustees, appointed by the governing body of the county, is responsible for the operation, governance, and management of a publicly funded health care facility designated by the county's governing body.¹

Specifically, the board of trustees is empowered to:²

- Lease, either as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property except in accordance with the requirements of s. 125.35 [F. S. 1973].
- Sue and be sued.
- Have a seal.
- Adopt bylaws, rules, and regulations for the board's responsibilities.
- Execute contracts.
- Acquire and hold title to real or personal property.
- Appoint and remove a chief executive officer of the trust.

¹ See Part II of Chapter 154, Florida Statutes.

² Section 154.11(1), F.S. However, note that a public health trust may not impose any tax, issue bonds, or require the imposition of a tax or the issuance of any bond by the governing body of the county. Section 154.11(2), F.S.

- Establish and collect fees for using or receiving services from the facility.
- Accept gifts of money, services, or real or personal property.
- Appoint, remove, or suspend employees or agents of the board, fix their compensation, and adopt personnel and management policies.
- Provide for employee benefits.
- Cooperate with and contract with any governmental agency or instrumentality, federal, state, municipal, or county.
- Adopt rules and regulations for the management and use of any properties under its control.
- Appoint originally the staff of physicians to practice in a designated facility and approve bylaws and rules to be adopted by the medical staff addressing the method of appointing or removing additional staff members.
- Employ certified public accountants and legal counsel.

Section 125.35, F. S., authorizes a board of county commissioners to sell and convey any real or personal property, and to lease real property belonging to the county, whenever the county believes it is in its best interest to do so. However, the sale or lease must be awarded to the highest and best bidder for the highest and best use. Each sale or lease must be noticed by publishing once a week, for at least two weeks, in a newspaper of general circulation published in the county. The highest bid must be accepted, unless all are rejected because all are too low. A surety bond may be required of each bid submitted.

Jackson Health System

A Public Health Trust was created in 1973 by the Miami-Dade³ Board of County Commissioners as an independent governing body for Jackson Memorial Hospital. In 2003, the Board of County Commissioners amended the Miami-Dade County Code to expand the responsibilities of the Public Health Trust countywide to health care facilities within the Jackson Health System. The Trust is comprised of volunteer citizens who set policies that assure that the Jackson Health System is responsive to community needs. This “citizen body” provides leadership for joint planning between Jackson Health System, the University of Miami Miller School of Medicine, Miami-Dade County and other private and community organizations.⁴

Representatives of Jackson Health System have indicated that the requirements in s. 125.35, F.S., (1973) prove cumbersome, time-consuming, and wasteful when trying to recruit physicians and other health care practitioners who desire to lease office space in the hospital. Typically the only bid received is from that one practitioner.

III. Effect of Proposed Changes:

Section 1 amends s. 154.11, F.S., to authorize the board of trustees of a public health trust (Jackson Health System) to lease out its office space without first advertising and soliciting bids for the office space.

Section 2 provides an effective date of July 1, 2014.

³ In 1973 the county was named Dade County.

⁴ See Jackson Health System, *Public Health Trust*, <http://www.jacksonhealth.org/trust.asp>, (Last visited March 18, 2014).

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:

Jackson Health System, as well as any other public health trust, will be able to quickly and efficiently provide available office space to physicians and other health care professionals without the expense and delay of advertising and proceeding through a bid process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 154.11 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Braynon

36-00368A-14

2014640__

1 A bill to be entitled
2 An act relating to public health trusts; amending s.
3 154.11, F.S.; authorizing public health trusts to
4 lease certain real property; providing an effective
5 date.

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

8
9 Section 1. Paragraph (f) of subsection (1) of section
10 154.11, Florida Statutes, is amended to read:

11 154.11 Powers of board of trustees.—

12 (1) The board of trustees of each public health trust shall
13 be deemed to exercise a public and essential governmental
14 function of both the state and the county and in furtherance
15 thereof it shall, subject to limitation by the governing body of
16 the county in which such board is located, have all of the
17 powers necessary or convenient to carry out the operation and
18 governance of designated health care facilities, including, but
19 without limiting the generality of, the foregoing:

20 (f) To lease, ~~either~~ as lessee or lessor, or rent for any
21 number of years and upon any terms and conditions real property,
22 except that the board shall not lease or rent, as lessor, any
23 real property other than office space controlled by a public
24 health trust, except in accordance with the requirements of s.
25 125.35, Florida Statutes ~~{F.S. 1973}~~.

26 Section 2. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

March 11, 2014

Senator Wilton Simpson, Chair
Community Affairs
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

This letter is to request that **Senate Bill #640**, relating to *Public Health Trust* be placed on the agenda of the next scheduled meeting of the committee. SB 640 has passed its first committee of reference unanimously.

SB 640 Authorizing public health trusts to lease certain real property, etc.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon".

Senator Braynon
District 36

cc. *Tom Yeatman, Staff Director*
Ann Whittaker, Committee Administrative Assistant - 315 K

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 956

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Bean

SUBJECT: Coastal Management

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.	White	Yeatman	CA	Fav/CS
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 956 authorizes the Department of Environmental Protection (DEP) to grant areawide and general permits for coastal construction activities. With respect to areawide permits, the DEP must consult with the Florida Fish and Wildlife Conservation Commission (FWC) for each areawide permit proposed. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide and general permits.

The bill allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves.

Lastly, the bill allows the DEP to promote the public use of aquatic preserves by authorizing privileges or concessions for visitor accommodations. The bill provides for transparency and public input regarding privileges and concessions.

II. Present Situation:

Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles, 825 miles of which is considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.¹ Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.² Florida's beaches are a primary tourist destination, attracting 38 million visitors in 2012 and providing \$55 billion in sales to the state's economy.³

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the Department of Natural Resources (DNR) to regulate construction and physical activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.⁴

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.⁵

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.⁶

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCL) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency

¹ DEP, *Statistical Abstract, Geographical Summary*, <http://www.dep.state.fl.us/secretary/stats/geographical.htm> (last visited Mar. 10, 2014).

² DEP, *Beaches and Coastal Systems*, <http://dep.state.fl.us/beaches/> (last visited Mar. 10, 2014).

³ Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, available at <http://www.fsbpa.com/EconomicFactSheet.pdf> (last visited Mar. 10, 2014).

⁴ Chapter 65-408, Laws of Fla.

⁵ Chapter 70-231, Laws of Fla.

⁶ Chapter 71-136, Laws of Fla.

response. To qualify for an areawide permit, the statute requires that the activities “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.”⁷ The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.”⁸ Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

Aquatic Preserves

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have “exceptional biological, aesthetic, and scientific value.”⁹ There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.¹⁰

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.¹¹

The DEP is responsible for managing the state’s aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.¹² The DEP adopted Rules 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

III. Effect of Proposed Changes:

Section 1 amends s. 161.053, F.S., to require the DEP to adopt rules for areawide and general permits. The bill expands the types of activities allowed under each type of permit.

⁷ Chapter 96-371, Laws of Fla.

⁸ Rule 62B-34.010(7), F.A.C., defines the general permit line as “the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county.”

⁹ Sections 258.35-394, and 258.40-46, F.S.

¹⁰ DEP, *Florida’s Aquatic Preserves*, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Mar. 3, 2014).

¹¹ DEP, *Florida’s Aquatic Preserves, Protecting Our Most Valued Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf (last visited Mar. 3, 2014).

¹² Sections 258.35-258.394 and 258.40-258.46, F.S.

For areawide permits, the bill authorizes construction of minor structures and specifies dune restoration and on-grade walkovers qualify under this type of permit. The DEP must consult with the FWC for each proposed areawide permit.¹³

For general permits, the bill expands the types of activities to include dune restoration, construction of swimming pools associated with single-family habitable structures that do not advance the existing line of construction and comply with siting and design requirements, and minor reconstruction of existing coastal armoring structures.

Section 2 creates s. 258.435, F.S., promoting the use of aquatic preserves and their associated uplands. The bill allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund and appropriated to the DEP for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

The bill authorizes the DEP to grant a privilege or concession for the accommodation of visitors to an aquatic preserve as long as the privilege or concession does not interfere with the public's access to the preserve and is compatible with the preserve's management plan. It specifies that, in granting a concession, the DEP must base their decision on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the recipient without consent from the DEP. The public is afforded transparency and input measures, as the bill requires the DEP website to display proposed concession agreements, and allows for the public to comment on proposed concession agreements prior to execution of an agreement.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Currently, the FWC is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. This provision of the bill allows FWC to retain their involvement in the permitting process, which is of particular relevance with respect to swimming pools associated with single-family homes that produce an illuminating artificial light that may interfere with sea turtle nesting.

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

None.

B. Private Sector Impact:

The private sector could anticipate a reduction in permit fees due to the decrease in required individual permits.¹⁴

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.¹⁵

C. Government Sector Impact:

The DEP will experience a reduction in revenue from reduced permit fees. Activities that currently require administrative permits may now qualify for general permits or areawide permits. The DEP estimates approximately \$66,000 in lost revenues based on the number of permit applications and permit application fees from 2013.¹⁶ Conversely, local governments applying for coastal construction permits will realize a cost savings as the number of required individual permits is decreased.

The state will realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP agency analysis includes examples of revenue generated from agreements with private entities. At Little St. George Island, the DEP contracts with a concessionaire to provide an “all inclusive” primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately \$148,000 over five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement allows for the state to receive 10 percent of gross revenue per year, providing approximately \$50,000 over the next five years.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEP to grant areawide permits for construction of minor structures, including dune restoration and on-grade dune walkovers, which expands the allowable activities under an areawide permit. The statute states an areawide permit may be granted to local

¹⁴ DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014).

¹⁵ *Id.* at 5-6.

¹⁶ *Id.*

¹⁷ *Id.*

governments, governmental agencies, and utility companies as long as the activity does “not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” The DEP has not defined “dune restoration” in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide permit applications, which may resolve this issue.

The bill allows swimming pools to be permitted under a general permit as long as they do not advance the existing line of construction and “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” Rule 62B-33.002(60)(c) F.A.C., specifies a structure is considered a “major structure” if “as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system.” Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a “nonhabitable major structure.” The swimming pool provision in the bill could necessitate changes be made to the swimming pool criteria established in rule.

VIII. Statutes Affected:

This bill substantially amends section 161.053 of the Florida Statutes.

This bill creates section 258.435 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 25, 2014:

Requires the DEP to consult with FWC on each proposed areawide permit. With respect to the granting of concessions and privileges in aquatic preserves, the DEP would consider specified criteria, post proposed concession agreements on the DEP website, and ensure that the public has the opportunity for input.

CS by Environmental Preservation and Conservation on March 13, 2014:

- Requires the DEP to adopt rules to establish criteria and guidelines for areawide and general permits;
- Allows the DEP to issue a general permit for dune reconstruction, construction of swimming pools associated with single family habitable structures, and minor reconstruction of existing coastal armoring structures; and
- Deletes the term “lease” from the types of agreements the DEP may grant for visitor accommodations to aquatic preserves.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;
and Senator Bean

592-02553-14

2014956c1

1 A bill to be entitled
2 An act relating to coastal management; amending s.
3 161.053, F.S.; authorizing the Department of
4 Environmental Protection to grant areawide permits for
5 certain structures; requiring the department to adopt
6 rules; creating s. 258.435, F.S.; requiring the
7 department to promote the public use of aquatic
8 preserves and their associated uplands; authorizing
9 the department to receive gifts and donations for
10 certain purposes; authorizing the department to grant
11 privileges or concessions for the accommodation of
12 visitors in and use of aquatic preserves and their
13 associated uplands provided certain conditions are
14 met; providing that such privileges or concessions may
15 be granted without advertisement or without using a
16 competitive bidding process; prohibiting a grantee
17 from assigning or transferring such privileges or
18 concessions without the department's consent;
19 providing an effective date.

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

22
23 Section 1. Subsections (17) and (18) of section 161.053, Florida
24 Statutes, are amended to read:

25 161.053 Coastal construction and excavation; regulation on
26 county basis.—

27 (17) The department may grant areawide permits to local
28 governments, other governmental agencies, and utility companies
29 for special classes of activities in areas under their general

592-02553-14

2014956c1

30 jurisdiction or responsibility or for the construction of minor
31 structures, if these activities or structures, due to the type,
32 size, or temporary nature of the activity or structure, will not
33 cause measurable interference with the natural functioning of
34 the beach-dune system or with marine turtles or their nesting
35 sites. Such activities or structures must comply with this
36 section and may include, but are not limited to: road repairs,
37 not including new construction; utility repairs and
38 replacements, or other minor activities necessary to provide
39 utility services; beach cleaning; dune restoration; on-grade
40 walkovers for enhancing accessibility or usage in compliance
41 with the Americans with Disabilities Act; and emergency
42 response. The department shall ~~may~~ adopt rules to establish
43 criteria and guidelines for permit applicants. The department
44 must require notice provisions appropriate to the type and
45 nature of the activities for which the areawide permits are
46 sought.

47 (18) (a) The department may grant general permits for
48 projects, including dune restoration, dune walkovers, decks,
49 fences, landscaping, sidewalks, driveways, pool resurfacing,
50 minor pool repairs, and other nonhabitable structures, if the
51 projects, due to type, size, or temporary nature, will not cause
52 a measurable interference with the natural functioning of the
53 beach-dune system or with marine turtles or their nesting sites.
54 Multifamily habitable structures do not qualify for general
55 permits. However, single-family habitable structures and
56 swimming pools associated with such single-family habitable
57 structures that do not advance the line of existing construction
58 and satisfy all siting and design requirements of this section

592-02553-14

2014956c1

59 and minor reconstruction for existing coastal armoring
60 structures may be eligible for a general permit.

61 (b) The department shall ~~may~~ adopt rules to establish
62 criteria and guidelines for permit applicants.

63 (c) ~~(a)~~ Persons wishing to use the general permits must, at
64 least 30 days before beginning any work, notify the department
65 in writing on forms adopted by the department. The notice must
66 include a description of the proposed project and supporting
67 documents depicting the proposed project, its location, and
68 other pertinent information as required by rule, to demonstrate
69 that the proposed project qualifies for the requested general
70 permit. Persons who undertake projects without proof of notice
71 to the department, but whose projects would otherwise qualify
72 for general permits, shall be considered to have undertaken a
73 project without a permit and are subject to enforcement pursuant
74 to s. 161.121.

75 (d) ~~(b)~~ Persons wishing to use a general permit must provide
76 notice as required by the applicable local building code where
77 the project will be located. If a building code does not require
78 ~~requires no~~ notice, a ~~any~~ person wishing to use a general permit
79 must, at a minimum, post a sign describing the project on the
80 property at least 5 days before commencing construction. The
81 sign must be at least 88 square inches, with letters no smaller
82 than one-quarter inch.

83 Section 2. Section 258.435, Florida Statutes, is created to
84 read:

85 258.435 Use of aquatic preserves for the accommodation of
86 visitors.-

87 (1) The Department of Environmental Protection shall

592-02553-14

2014956c1

88 promote the public use of aquatic preserves and their associated
89 uplands. The department may receive gifts and donations to carry
90 out the purposes of this part. Money received in trust by the
91 department by gift, devise, appropriation, or otherwise, subject
92 to the terms of such trust, shall be deposited into the Land
93 Acquisition Trust Fund and appropriated to the department for
94 the administration, development, improvement, promotion, and
95 maintenance of aquatic preserves and their associated uplands
96 and for any future acquisition or development of aquatic
97 preserves and their associated uplands.

98 (2) The department may grant a privilege or concession for
99 the accommodation of visitors in and the use of aquatic
100 preserves and their associated state-owned uplands if the
101 privilege or concession does not deny or interfere with the
102 public's access to such lands and is compatible with the aquatic
103 preserve's management plan as approved by the Acquisition and
104 Restoration Council. A privilege or concession may be granted
105 without advertisement or without using a competitive bidding
106 process. A privilege or concession may not be assigned or
107 transferred by the grantee without the consent of the
108 department.

109 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Wave in Support

Bill Number SB 956
(if applicable)

Name Andrew Ketchel

Amendment Barcode _____
(if applicable)

Job Title Deputy Legislative Affairs Director - DEP

Address 3400 Commonwealth Pk

Phone 245-2012

Tallahassee
City State Zip

E-mail _____

Speaking: For Against Information

Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Coastal Management

Bill Number SB 956
(if applicable)

Name Mary Jean Van

Amendment Barcode 476578
(if applicable)

Job Title Legislative Director

Address 8324 Charleston Rd

Phone 850/519-7859

TLH FL 32309
City State Zip

E-mail maryjeanvan@concord.net

Speaking: For Against Information

Representing Amendment 476578
Audubon 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)

3/25/14
Meeting Date

Topic Coastal Mgt

Bill Number SB 956
(if applicable)

Name Mary Jean Yan

Amendment Barcode 208994
(if applicable)

Job Title Legislative Director

Address 3324 Charleston Rd

Phone 850/519-7859

THH
City State Zip

E-mail maryjeanyan@coastal

Speaking: For Against Information

Representing Amendment 298994
Audubon 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

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 17, 2014

The Honorable Wilton Simpson
Chair, Community Affairs Committee
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

This letter is to request to have my bill *CS for SB 956 relating to coastal management* be heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1172

INTRODUCER: Senator Sobel

SUBJECT: Conveyance of Property Taken by Eminent Domain

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 1172 authorizes the state or a political subdivision to convey, without restriction, condemned property to a private party if that property is near a large hub airport and the property was condemned under certain conditions and for specified purposes.

II. Present Situation:

Constitutional Provisions on Takings

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: “nor shall private property be taken for public use, without just compensation.”¹

Similarly, the Florida Constitution states that: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”²

There is no absolute definition of what constitutes a public use. The conception changes along with evolutions of societal norms and changed “circumstances brought about by an increase in population and new modes of communication and transportation.”³ In situations involving the conferral of both private and public benefits by a condemnation, the determination of whether the condemnation was for a public use may turn on whether the public benefits are of a primary or an incidental character.⁴ An incidental benefit to a private party does not render a taking invalid so long as the primary benefit is to the public.

¹ U.S.C.A. CONST. AMEND V.

² FLA. CONST., art. X., s. 6(a).

³ 21 Fla. Jur 2d Eminent Domain s. 27, *Generally; public purpose distinguished* (2014).

⁴ 21 Fla. Jur 2d Eminent Domain s. 29, *Purpose partly public and partly private; incidental private use or benefit* (2014).

Florida Law on Eminent Domain

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.⁵ Compensation is generally the payment of the fair market value of the property.⁶ Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.⁷ Also, the petitioner must always pay attorney's fees and reasonable costs to the defendant.⁸ Reasonable costs include appraisal fees and, if business damages are involved, an accountant's fee.⁹ Defendants also have the right to a jury trial.¹⁰

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process, which involves the filing of a petition for condemnation and, if the property owner challenges the action, a jury trial.¹¹ The second process, called a "quick taking," occurs when the governmental entity files a declaration of taking (containing a good faith estimate of the value of the property) and takes immediate possession of the property before the completion of the judicial procedure.¹² A "taking" of property is considered to result from a physical invasion or a regulatory imposition.¹³

Restrictions on the Conveyance of Condemned Property to Private Parties

The state may not authorize the taking of private property solely for another private party's private use, even if the state pays full compensation for the condemned property.¹⁴ Neither the state nor any political subdivision may convey a property taken by condemnation to a private entity, unless the conveyance meets the requirements of certain statutory exceptions.¹⁵ These exceptions include properties condemned for:

- Use in common carrier services or systems;
- Use as a road or other right-of-way;
- Use in providing utility services or systems; and
- Use in providing public infrastructure.

There are also statutory restrictions on the subsequent conveyance of a condemned property that has already been conveyed to a private party. If ownership of a condemned property is conveyed to a private party pursuant to one of the statutory exceptions described above and at least 10 years have elapsed since the condemning authority acquired title to the property, then the property may be transferred again to another private party after public notice and competitive

⁵ Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 Nov. FLA. B.J. 20, 21 (Nov. 2011).

⁶ *Id.*

⁷ *Id.*

⁸ Section 73.091(1), F.S.

⁹ *Id.*

¹⁰ Section 73.071(1), F.S.

¹¹ Sections 73.031(1) and 73.071(1), F.S.

¹² Section 74.031, F.S.

¹³ *Alachua Land Investors, LLC v. City of Gainesville*, 2013 WL 363376, at *2 (Fla. 1st DCA 2013).

¹⁴ 21 Fla. Jur 2d Eminent Domain s. 25, *Taking for private use restricted* (2014).

¹⁵ Section 73.013(1), F.S.

bidding (unless otherwise provided by general law).¹⁶ If less than 10 years have elapsed since the condemning authority acquired title to the property, the property may be conveyed a second time if the current titleholder certifies that the property is no longer needed for the use for which the property was originally condemned, and the owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price received from the condemning authority.¹⁷ Two statutory exceptions that substitute the condemning authority for the certifying party or the current titleholder operate similarly.¹⁸

Large Hub Airports

According to the Federal Aviation Administration, a “large hub airport” is a public use airport that serves civil aviation and accounts for 1 percent or more of annual national passenger boardings.¹⁹ There are four large hub airports in Florida: Fort Lauderdale-Hollywood International Airport, Miami International Airport, Orlando International Airport, and Tampa International Airport.²⁰

The National Plan of Integrated Airport Systems is overseen by the United States Secretary of Transportation.²¹ The plan is designed to ensure a “safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service.”²²

The state of Florida and its political subdivisions have the authority to condemn property when necessary for air approach protection.²³ A county’s taking of only residential property (but not similarly situated commercial property) serves a valid public purpose when the residential property is condemned “because the airport zoning laws indicate that residential construction in areas exceeding certain noise level requirements is an incompatible use, and testimony indicates that the parcels taken meet the requirements for incompatible use.”²⁴

Appendix A of 14 C.F.R. part 150 regulates “noise exposure maps” related to airports. A noise exposure map is a “scaled, geographic depiction of an airport, its noise contours, and surrounding area...”²⁵ Appendix A establishes a uniform methodology for the development and preparation of airport noise exposure maps. It also identifies land uses that are considered to be compatible with various exposures of individuals to noise around airports. Residential land uses are not recommended for areas with an average noise exposure above 65 decibels.

¹⁶ Section 73.013(2)(a), F.S.

¹⁷ Section 73.013(2)(b), F.S.

¹⁸ Sections 73.013(1)(f) and (g), F.S.

¹⁹ Federal Aviation Administration, *Airport Categories – Airports*, available at,

http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/ (last visited March 21, 2014).

²⁰ Wikipedia, *List of airports in Florida*, available at, http://en.wikipedia.org/wiki/List_of_airports_in_Florida (last visited March 21, 2014).

²¹ 49 U.S.C. s. 47103.

²² *Id.*

²³ Section 333.12, F.S.

²⁴ 21 Fla. Jur 2d Eminent Domain s. 31, *Airports* (2014).

²⁵ 14 C.F.R. s. 150.7.

III. Effect of Proposed Changes:

Section 1 authorizes the state or a political subdivision to convey a condemned property without restriction to a private party if the property is near a large hub airport and the property was condemned pursuant to:

- A noise mitigation program; or a
- A noise compatibility program; and
- The property was condemned on the basis:
 - That the property is deemed incompatible with residential land use under the standards provided in Appendix A of 14 CFR part 150;
 - Of noise mitigation measures; or
 - Of measures required for the safety utility, or efficiency of an airport identified in a Record of Decision or other evaluation issued by the Federal Aviation Administration in connection with an airport development project.

This authority only applies to large hub airports identified in the National Plan of Integrated Airport Systems prepared in accordance with 49 U.S.C. s. 47103.

Section 2 provides an effective date of July 1, 2014.

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 Florida Constitution prohibits the conveyance of private property taken by eminent domain after January 2, 2007 to a private party, unless that conveyance is authorized by a general law passed by 60 percent of the membership of each house of the Legislature.²⁶

The bill authorizes the conveyance of private property taken by eminent domain, therefore it requires a 60 percent vote for final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ FLA. CONST., art. X., s. 6(c).

B. Private Sector Impact:

Florida's eminent domain law requires a condemning authority to pay the owner of the condemned lands full compensation (as opposed to the federally mandated "just compensation"). Therefore, any private owner of condemned lands should not suffer an adverse fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 73.013 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Sobel

33-01132-14

20141172__

1 A bill to be entitled

2 An act relating to the conveyance of property taken by
3 eminent domain; amending s. 73.013, F.S.; authorizing
4 a condemning authority to convey, without restriction,
5 lands condemned for specific noise mitigation or noise
6 compatibility programs at certain large hub airports
7 to a person or private entity; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (1) of section 73.013, Florida
13 Statutes, is amended to read:

14 73.013 Conveyance of property taken by eminent domain;
15 preservation of government entity communications services
16 eminent domain limitation; exception to restrictions on power of
17 eminent domain.—

18 (1) Notwithstanding any other provision of law, including
19 any charter provision, ordinance, statute, or special law, if
20 the state, any political subdivision as defined in s. 1.01~~(8)~~,
21 or any other entity to which the power of eminent domain is
22 delegated files a petition of condemnation on or after the
23 effective date of this section regarding a parcel of real
24 property in this state, ownership or control of property
25 acquired pursuant to such petition may not be conveyed by the
26 condemning authority or any other entity to a natural person or
27 private entity, by lease or otherwise, except that ownership or
28 control of property acquired pursuant to such petition may be
29 conveyed, by lease or otherwise, to a natural person or private

33-01132-14

20141172__

30 entity:

31 (a) For use in providing common carrier services or
32 systems;

33 (b)1. For use as a road or other right-of-way or means that
34 is open to the public for transportation, whether at no charge
35 or by toll;

36 2. For use in the provision of transportation-related
37 services, business opportunities, and products pursuant to s.
38 338.234, on a toll road;

39 (c) That is a public or private utility for use in
40 providing electricity services or systems, natural or
41 manufactured gas services or systems, water and wastewater
42 services or systems, stormwater or runoff services or systems,
43 sewer services or systems, pipeline facilities, telephone
44 services or systems, or similar services or systems;

45 (d) For use in providing public infrastructure;

46 (e) That occupies, pursuant to a lease, an incidental part
47 of a public property or a public facility for the purpose of
48 providing goods or services to the public;

49 (f) Without restriction, after public notice and
50 competitive bidding unless otherwise provided by general law, if
51 less than 10 years have elapsed since the condemning authority
52 acquired title to the property and the following conditions are
53 met:

54 1. The condemning authority or governmental entity holding
55 title to the property documents that the property is no longer
56 needed for the use or purpose for which it was acquired by the
57 condemning authority or for which it was transferred to the
58 current titleholder; and

33-01132-14

20141172__

59 2. The owner from whom the property was taken by eminent
60 domain is given the opportunity to repurchase the property at
61 the price that he or she received from the condemning authority;

62 (g) After public notice and competitive bidding unless
63 otherwise provided by general law, if the property was owned and
64 controlled by the condemning authority or a governmental entity
65 for at least 10 years after the condemning authority acquired
66 title to the property; ~~or~~

67 (h) In accordance with subsection (2); or

68 (i) Without restriction, if the condemning authority
69 condemns the property pursuant to a noise mitigation or noise
70 compatibility program at an airport governed by Federal Aviation
71 Administration requirements on the basis that the property is
72 deemed incompatible with residential land use under the
73 standards provided in Appendix A of 14 C.F.R. part 150 or on the
74 basis of noise mitigation measures or measures required for the
75 safety, utility, or efficiency of an airport identified in a
76 Record of Decision or other evaluation issued by the Federal
77 Aviation Administration in connection with an airport
78 development project. This paragraph applies only to large hub
79 airports identified in the National Plan of Integrated Airport
80 Systems prepared in accordance with 49 U.S.C. s. 47103.

81 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Eminent Domain

Bill Number 1172
(if applicable)

Name CAROL DUNLAPSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address 205 S ADAMS ST #250

Phone 566 9056

Street

City

State

Zip

TALLAHASSEE FL 32301

E-mail _____

Speaking: For Against Information

Representing City of Davia Beach

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-2014

Meeting Date

Topic Eminent Domain

Bill Number SB 1172
(if applicable)

Name Edward Labrador

Amendment Barcode _____
(if applicable)

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue

Phone 954-826-1155

Street

Fort Lauderdale FL 33301

City

State

Zip

E-mail elabrador@broward.org

Speaking: For Against Information

Representing Broward 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.

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 17, 2014

I respectfully request that **1172**, relating to Conveyance of Property Taken by Eminent Domain, be placed on the:

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

A handwritten signature in cursive script that reads "Eleanor Sobel".

Senator Eleanor Sobel
Florida Senate, District 33

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 974

INTRODUCER: Transportation Committee and Senator Abruzzo

SUBJECT: Towing of Vehicles and Vessels

DATE: March 20, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 974 authorizes an owner or lessee of real property to have a vehicle or vessel removed from the property without posted tow-away zone signage if the vehicle or vessel has been parked or stored on the property for more than ten days.

II. Present Situation:

Section 715.07, F.S., authorizes the owner or lessee of real property to have towed or removed from the property by a person regularly engaged in the business of towing any vehicle or vessel parked on such property without the property owner's permission and without liability for costs. This authorization is subject to strict compliance with specified conditions relating to storage of the towed vehicle or vessel, time limitations for notifying the local police department or sheriff of the towing, and required provision to the police department or sheriff of vehicle or vessel identification information.

With two exceptions,¹ the property owner or lessee must post a specified notice before towing or removing the vehicle or vessel.

¹ Property that is obviously a part of a single-family residence, or when notice is personally given to the owner or other authorized person in control of the vehicle or vessel that the property is unavailable for unauthorized parking and that the vehicle or vessel is subject to being removed at the owner's or operator's expense. See s. 715.07(2)(a)5., F.S.

The notice must:

- Be prominently placed at each driveway access or curb cut allowing vehicular access to the property within five feet from the public right-of-way line, except that if there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage;
- Clearly indicate that unauthorized vehicles will be towed away at the owner's expense, in light-reflective letters not less than 2 inches high on a contrasting background;
- Include in letters not less than 4 inches high the words "tow-away zone"; and
- Provide the name and current telephone number of the person or firm towing or removing the vehicle or vessel.

In addition, the sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than three feet or more than six feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to towing or removing any vehicle or vessel.

A business with 20 or fewer parking spaces is authorized to satisfy the above-described requirements by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in light-reflective letters not less than 4 inches high.

Section 715.07, F.S., provides for two instances in which towing is permissible although signage is not visible. A business owner or lessee is authorized to have a vehicle or vessel removed by a towing company when the vehicle or vessel is parked in a manner that restricts the normal operation of business. If a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway, the owner, lessee, or agent may have the vehicle or vessel removed by a towing company. An order must be signed by the owner, lessee, or agent for the vehicle or vessel for the vehicle or vessel to be removed without a posted tow-away zone sign.²

III. Effect of Proposed Changes:

The bill amends s. 715.07, F.S., to provide that, in addition to current authorizations for causing a vehicle to be towed, when a vehicle or vessel has been parked or stored on private property for more than ten days, the owner or lessee, or agent of the owner or lessee, of the real property may have the vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign.

The bill provides that the ten-day period does not begin to run until the owner or lessee (or agent) of the real property physically attaches to the vehicle or vessel with adhesive material notice that the vehicle or vessel will be towed or removed from the real property. The notice must:

- In the case of a vehicle, be attached to the vehicle's windshield.
- In the case of a vessel, be attached adjacent to the vessel registration number on the left or port side of the vessel.
- Be at least 8.5 by 11 inches in size.

² For parking and towing considerations pertinent to condominium association managers, see Joseph Sanders, *Towing Vehicles The Good, the Bad, and the Ugly*, *The Florida Community Association Journal*, 26-29 (Jan. 2009).

- Clearly indicate the date on which the notice was posted.
- Clearly indicate in bold letters that the vehicle or vessel will be towed or removed from the real property after ten days from the date on which the notice was posted.

The bill also makes grammatical and editorial changes and corrects cross-references necessitated by statutory changes made elsewhere in the bill.

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:

Owners and lessees of real property are relieved of the cost of posting tow-away zone signage when a vehicle or vessel has been parked or stored on the property for more than 10 days. Practically, it is expected that most business owners and lessees are likely to already have tow-away zone signage pursuant to current law. Thus, the cost savings is more likely to occur for non-business private property owners.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the absence of proof that a vehicle or vessel has been parked or stored on private property for the required period exceeding 10 days, those who tow or remove a vehicle or vessel and the owners of the real property causing a tow may be subject to claims for damages incurred by the vehicle or vessel owner.

VIII. Statutes Affected:

This bill amends section 715.07 of the Florida Statutes.

IX. Additional Information:

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

CS by Transportation on March 13, 2014:

Incorporates an amendment to provide that the 10-day period does not begin to run until a written notice is physically attached to the vehicle or vessel stating that it will be towed or removed after ten days from the date on which the notice was posted and to provide requirements for placement, size, and content of the notice.

- B. **Amendments:**

None.



164774

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Community Affairs (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 170

and insert:

6. Notwithstanding subparagraph 5., an owner or lessee of real property, or an agent of the owner or lessee, may have a vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign if: ~~a business owner or lessee may authorize the removal of a vehicle or vessel by a towing company when~~



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11 a. The vehicle or vessel is parked in ~~such~~ a manner that
12 restricts the normal operation of business or; is ~~and if a~~
13 ~~vehicle or vessel~~ parked on a public right-of-way in a manner
14 that obstructs access to a private driveway; or

15 b. The owner or, lessee, or agent of the owner or lessee,
16 of the real property obtains a report from a law enforcement
17 agency that has jurisdiction which states that the vehicle was
18 parked on the property for at least 10 days ~~may have the vehicle~~
19 ~~or vessel removed by a towing company upon signing an order that~~
20 ~~the vehicle or vessel be removed without a posted tow-away zone~~
21 ~~sign.~~

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Between lines 5 and 6
26 insert:

27 such owner or lessee obtains a report from a law
28 enforcement agency which states that

By the Committee on Transportation; and Senator Abruzzo

596-02584-14

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1 A bill to be entitled
2 An act relating to towing of vehicles and vessels;
3 amending s. 715.07, F.S.; authorizing an owner or
4 lessee of real property to have a vehicle or vessel
5 removed from the property without certain signage if
6 the vehicle or vessel has remained on the property for
7 a specified period; providing that the specified
8 period does not begin until a certain notice is
9 physically attached to the vehicle or vessel;
10 providing requirements for the notice; providing an
11 effective date.

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

14
15 Section 1. Section 715.07, Florida Statutes, is amended to
16 read:

17 715.07 Vehicles or vessels ~~parked on private property;~~
18 towing.—

19 (1) As used in this section, the term:

20 (a) "Vehicle" means a any mobile item that ~~which~~ normally
21 uses wheels, whether motorized or not.

22 (b) "Vessel" means every description of watercraft, barge,
23 and airboat used or capable of being used as a means of
24 transportation on water, other than a seaplane or a "documented
25 vessel" as defined in s. 327.02(9).

26 (2) The owner or lessee of real property, or a any person
27 authorized by the owner or lessee, which person may be the
28 designated representative of the condominium association if the
29 real property is a condominium, may cause a any vehicle or

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30 vessel parked on such property without her or his permission to
31 be removed by a person regularly engaged in the business of
32 towing vehicles or vessels, without liability for the costs of
33 removal, transportation, or storage or damages caused by such
34 removal, transportation, or storage, under any of the following
35 circumstances:

36 (a) The towing or removal of a any vehicle or vessel from
37 private property without the consent of the registered owner or
38 other legally authorized person in control of that vehicle or
39 vessel is subject to strict compliance with the following
40 conditions and restrictions:

41 1.a. A Any towed or removed vehicle or vessel must be
42 stored at a site within a 10-mile radius of the point of removal
43 in a any county with a population of 500,000 ~~population~~ or more
44 ~~or, and~~ within a 15-mile radius of the point of removal in a any
45 county with a population of less than 500,000 ~~population~~. That
46 site must be open for the purpose of redemption of vehicles from
47 8 a.m. to 6 p.m. on any day that the person or firm towing such
48 vehicle or vessel is open for towing purposes, ~~from 8:00 a.m. to~~
49 ~~6:00 p.m.,~~ and, when closed, shall have prominently posted a
50 sign indicating a telephone number where the operator of the
51 site can be reached at all times. Upon receipt of a telephoned
52 request to open the site to redeem a vehicle or vessel, the
53 operator must ~~shall~~ return to the site within 1 hour ~~or she or~~
54 ~~he will be in violation of this section.~~

55 b. If no towing business providing such service is located
56 within the area of towing limitations under ~~set forth in~~ sub-
57 subparagraph a., the following limitations apply: a any towed or
58 removed vehicle or vessel must be stored at a site within a 20-

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59 mile radius of the point of removal in a any county with a
60 population of 500,000 ~~population~~ or more ~~or,~~ and within a 30-
61 mile radius of the point of removal in a any county with a
62 population of less than 500,000 ~~population~~.

63 2. Within 30 minutes after completion of the towing or
64 removal, the person or firm that towed or removed ~~towing or~~
65 ~~removing~~ the vehicle or vessel must ~~shall,~~ ~~within 30 minutes~~
66 ~~after completion of such towing or removal,~~ notify the municipal
67 police department or, in an unincorporated area, the sheriff,
68 of: the ~~such~~ towing or removal; the storage site; the time the
69 vehicle or vessel was towed or removed; and the make, model,
70 color, and license plate number of the vehicle or description
71 and registration number of the vessel. The person or firm ~~and~~
72 shall note on the trip record ~~obtain~~ the name of the person ~~at~~
73 ~~that department~~ to whom such information was reported ~~and note~~
74 ~~that name on the trip record.~~

75 3. A person in the process of towing or removing a vehicle
76 or vessel from the premises or parking lot in which the vehicle
77 or vessel is not lawfully parked must stop when a person seeks
78 the return of the vehicle or vessel. The vehicle or vessel must
79 be returned upon the payment of a reasonable service fee of not
80 more than one-half of the posted rate for the towing or removal
81 service as provided in subparagraph 7. ~~6.~~ The vehicle or vessel
82 may be towed or removed if, after a reasonable opportunity, the
83 owner or legally authorized person in control of the vehicle or
84 vessel is unable to pay the service fee. If the vehicle or
85 vessel is redeemed, a detailed signed receipt must be given to
86 the person redeeming the vehicle or vessel.

87 4. A person may not pay or accept money or other valuable

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88 consideration for the privilege of towing or removing vehicles
89 or vessels from a particular location.

90 5. Except when the ~~for~~ property is appurtenant to and
91 obviously a part of a single-family residence or, ~~and except for~~
92 ~~instances~~ when notice is personally given to the owner or other
93 legally authorized person in control of the vehicle or vessel
94 that the area in which that vehicle or vessel is parked is
95 reserved or otherwise unavailable for unauthorized vehicles or
96 vessels and that the vehicle or vessel is subject to being
97 removed at the owner's or operator's expense, before towing or
98 removing a vehicle or vessel from private property without the
99 consent of the owner or other legally authorized person in
100 control of that vehicle or vessel, a ~~any~~ property owner or
101 lessee, ~~or person authorized by the property owner or lessee,~~
102 ~~prior to towing or removing any vehicle or vessel from private~~
103 ~~property without the consent of the owner or other legally~~
104 ~~authorized person in control of that vehicle or vessel,~~ must
105 post a notice subject to ~~meeting~~ the following ~~requirements~~:

106 a. The notice must:

107 (I) Be prominently placed at each driveway access or curb
108 cut allowing vehicular access to the property, within 5 feet
109 from the public right-of-way line. If there are no curbs or
110 access barriers, the signs must be posted not less than one sign
111 for each 25 feet of lot frontage.

112 (II) ~~b. The notice must~~ Clearly indicate, in not less than
113 2-inch high, light-reflective letters on a contrasting
114 background, that unauthorized vehicles will be towed away at the
115 owner's expense. The words "tow-away zone" must be included on
116 the sign in not less than 4-inch high letters.

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117 ~~(III)e.~~ ~~The notice must also~~ Provide the name and current
118 telephone number of the person or firm towing or removing ~~the~~
119 vehicles or vessels.

120 ~~b.d.~~ The sign structure containing the required notices
121 must be permanently installed with the words "tow-away zone" at
122 least ~~not less than~~ 3 feet but no ~~and not~~ more than 6 feet above
123 ground level and must be continuously maintained on the property
124 for at least ~~not less than~~ 24 hours before ~~prior to the~~ towing
125 or removing a vehicle or vessel ~~removal of any vehicles or~~
126 ~~vessels~~.

127 ~~e.~~ The local government may require permitting and
128 inspection of such ~~these~~ signs before ~~prior to any~~ towing or
129 removing a vehicle or vessel is ~~removal of vehicles or vessels~~
130 ~~being~~ authorized.

131 ~~c.f.~~ A business with 20 or fewer parking spaces satisfies
132 the notice requirements of this subparagraph by prominently
133 displaying a sign stating "Reserved Parking for Customers Only
134 Unauthorized Vehicles or Vessels Will be Towed Away At the
135 Owner's Expense" in not less than 4-inch high, light-reflective
136 letters on a contrasting background.

137 ~~d.g.~~ A property owner towing or removing vessels from real
138 property must post notice, consistent with the requirements in
139 sub-subparagraphs a.-c. ~~a.-f.~~, which apply to vehicles, that
140 unauthorized vehicles or vessels will be towed away at the
141 owner's expense.

142 6. ~~Notwithstanding subparagraph 5., a business owner or~~
143 ~~lessee may authorize the removal of a vehicle or vessel by a~~
144 ~~towing company~~ when a ~~the~~ vehicle or vessel is parked in ~~such a~~
145 manner that restricts the normal operation of business; is ~~and~~

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146 ~~if a vehicle or vessel~~ parked on a public right-of-way in a
147 manner that obstructs access to a private driveway; or has been
148 parked or stored on private property for a period exceeding 10
149 days, the owner ~~or,~~ lessee, or agent of the owner or lessee, of
150 the real property may have the vehicle or vessel removed by a
151 towing company upon signing an order that the vehicle or vessel
152 be removed without a posted tow-away zone sign.

153 a. The 10-day period after which towing or removal of a
154 vehicle or vessel from real property without tow-away zone
155 signage is authorized does not begin until the owner or lessee,
156 or agent of the owner or lessee, of the real property physically
157 attaches to the vehicle or vessel with adhesive material notice
158 that the vehicle or vessel will be towed or removed from the
159 real property. The notice must:

160 (I) In the case of a vehicle, be attached to the vehicle's
161 windshield.

162 (II) In the case of a vessel, be attached adjacent to the
163 vessel registration number on the left or port side of the
164 vessel.

165 (III) Be at least 8.5 by 11 inches in size.

166 (IV) Clearly indicate the date on which the notice was
167 posted.

168 (V) Clearly indicate in bold letters that the vehicle or
169 vessel will be towed or removed from the real property after 10
170 days from the date on which the notice was posted.

171 ~~7.6. A~~ Any person or firm that tows or removes vehicles or
172 vessels and proposes to require an owner, operator, or person in
173 control of a vehicle or vessel to pay the costs of towing and
174 storage before ~~prior to~~ redemption of the vehicle or vessel must

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175 file and keep on record with the local law enforcement agency a
176 complete copy of the current rates to be charged for such
177 services and post at the storage site an identical rate schedule
178 and any written contracts with property owners, lessees, or
179 persons in control of property which authorize such person or
180 firm to remove vehicles or vessels as provided in this section.

181 8.7. ~~A~~ Any person or firm towing or removing ~~any~~ vehicles
182 or vessels from private property without the consent of the
183 owner or other legally authorized person in control of the
184 vehicles or vessels shall, on any trucks, wreckers as defined in
185 s. 713.78(1)(c), or other vehicles used in the towing or
186 removal, have the name, address, and telephone number of the
187 company performing such service clearly printed in contrasting
188 colors on the driver and passenger sides of the vehicle. The
189 name shall be in at least 3-inch, permanently affixed letters,
190 and the address and telephone number shall be in at least 1-
191 inch, permanently affixed letters.

192 9.8. Vehicle entry for the purpose of removing the vehicle
193 or vessel shall be allowed with reasonable care on the part of
194 the person or firm towing the vehicle or vessel. Such person or
195 firm shall be liable for any damage occasioned to the vehicle or
196 vessel if such entry is not in accordance with the standard of
197 reasonable care.

198 10.9. When a vehicle or vessel has been towed or removed
199 pursuant to this section, it must be released to its owner or
200 custodian within 1 ~~one~~ hour after requested. ~~A~~ Any vehicle or
201 vessel owner or agent of the owner may ~~shall have the right to~~
202 inspect the vehicle or vessel before accepting its return. ~~A~~
203 ~~and no~~ release or waiver of any kind which would release the

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204 person or firm towing the vehicle or vessel from liability for
205 damages noted by the owner or other legally authorized person at
206 the time of the redemption may not be required from a any
207 vehicle or vessel owner or custodian, or agent of the owner or
208 custodian as a condition of release of the vehicle or vessel to
209 its owner. A detailed, signed receipt showing the legal name of
210 the company or person towing or removing the vehicle or vessel
211 must be given to the person paying towing or storage charges at
212 the time of payment, whether requested or not.

213 (b) The ~~These~~ requirements of this subsection are minimum
214 standards and do not preclude enactment of additional
215 regulations by a any municipality or county including the right
216 to regulate rates when vehicles or vessels are towed from
217 private property.

218 (3) This section does not apply to law enforcement,
219 firefighting, rescue squad, ambulance, or other emergency
220 vehicles or vessels that are marked as such or to property owned
221 by a any governmental entity.

222 (4) When a person improperly causes a vehicle or vessel to
223 be removed, such person shall be liable to the owner or lessee
224 of the vehicle or vessel for the cost of removal,
225 transportation, and storage; any damages resulting from the
226 removal, transportation, or storage of the vehicle or vessel;
227 attorney ~~attorney's~~ fees; and court costs.

228 (5) (a) A Any person who violates subparagraph (2) (a)2. or
229 subparagraph (2) (a)7. ~~(2) (a)6.~~ commits a misdemeanor of the
230 first degree, punishable as provided in s. 775.082 or s.
231 775.083.

232 (b) A Any person who violates subparagraph (2) (a)1.,

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233 subparagraph (2)(a)3., subparagraph (2)(a)4., subparagraph
234 (2)(a)8. ~~(2)(a)7.~~, or subparagraph (2)(a)10. ~~(2)(a)9.~~ commits a
235 felony of the third degree, punishable as provided in s.
236 775.082, s. 775.083, or s. 775.084.

237 Section 2. 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)

3/25
Meeting Date

Topic Towing

Bill Number 974
(if applicable)

Name Sam Brewer

Amendment Barcode _____
(if applicable)

Job Title Past President, Professional

Wrecker Operators

Address 108 E. Jefferson St.

Phone _____

Street

Tallahassee

FL

32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing Professional Wrecker Operators of FL.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Gaming
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

25th District

March 18th, 2014

The Honorable Wilton Simpson
The Florida Senate
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Simpson:

I respectfully request that Senate Bill 974, related to Towing of Vehicles and Vessels, be placed on the Community Affairs committee agenda. This legislation will create additional criteria that allows an owner or lessee, or their agent to have a vehicle removed without a posted tow away zone sign.

Please let me know if you have any further questions. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Abruzzo".

Joseph Abruzzo

cc: Tom Yeatman, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 470

INTRODUCER: Community Affairs Committee and Senator Detert

SUBJECT: Malt Beverages

DATE: March 26, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Stearns	Yeatman	CA	Fav/CS
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 repeals the prohibition against beer tastings and creates conditions under which certain parties are authorized to conduct a tasting. The bill regulates the locations at which a tasting can be held and requires certain methods to be used at a tasting. The bill allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory.

The bill prohibits certain parties from paying a fee or any compensation to a vendor for conducting a tasting. The bill authorizes a premises to hold more than one tasting in a day, but only allows one tasting to take place at a time. The bill provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf.

The bill prohibits certain parties from engaging in cooperative advertising with a vendor.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) within the Department

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

² See s. 561.14, F.S.

of Business and Professional Regulation (Department) administers and enforces the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁴

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.⁵ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁷

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁸ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁹ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁰

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in pertinent part:

No manufacturer, distributor, importer, primary American source of supply, or brand owner... or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the

³ Section 561.02, F.S.

⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited March 4, 2014).

⁵ Section 561.14(2), F.S.

⁶ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁷ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

⁸ See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

⁹ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

¹⁰ See s. 561.221, F.S.

Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor...; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the Division to establish rules and require reports to enforce limitation on credits and other forms of assistance.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits manufacturers, distributors, importers, primary American sources of supply,¹¹ or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

¹¹ Section 564.045(1), F.S., defines the term "primary American source of supply" as the: manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

III. Effect of Proposed Changes:

Section 1 deletes brokers from the provisions of s. 561.42(14)(e), F.S., regulating malt beverages.

The bill allows a manufacturer, distributor, importer, or contracted third-party agent thereof, to conduct malt beverage tastings to be held on:

- The licensed premises of any vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or
- The licensed premises of any vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:
 - The licensed premises has at least 10,000 square feet of interior floor space exclusive of storage space; or
 - The licensed premises is a package store licensed under s. 565.02(1)(a) F.S.

A malt beverage tasting must be limited to and directed toward the general public of the age of legal consumption.

For tastings conducted on the premises of a vendor authorized for on premises consumption, each serving must be provided in a tasting cup, glass, or other open container.

For tastings conducted on the premises of a vendor authorized only for off premises consumption, the tasting must be conducted in the interior of the building and each serving must be provided in a tasting cup having a capacity of 3.5 ounces or less.

A manufacturer, distributor, importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of any malt beverage at no or reduced cost, in return for the vendor's authorization of the tasting at his premises.

A manufacturer, distributor, importer, or any contracted third-party agent thereof must provide all of the beverages to be tasted. The total volume of beverages may not exceed 576 ounces per tasting. Any samples provided to a vendor count against the 576-ounce cap. The party conducting the tasting must have paid all excise taxes on the beverages and must return to the manufacturer or distributor's inventory any remaining beverages after the tasting. The party may purchase at retail price the malt beverages to be used for the tasting from the vendor that owns the premises to be used for the tasting, but any remaining beverages must be removed after the tasting.

More than one tasting may be held on a premises per day, but only one manufacturer, distributor, importer, or any contracted third-party agent thereof may conduct a tasting on the premises at any one time.

A manufacturer, distributor, or importer that contracts with a third-party agent to conduct a malt beverage tasting on its behalf is responsible for any violation of this section by that agent.

A vendor may conduct a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

The Division may adopt rules pursuant to ss. 561.08 and 561.11, F.S., to implement, administer, and enforce this bill.

A manufacturer, distributor, importer, brand owner, brand registrant, sales agent or sales person, or any contracted third-party agent thereof may not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.42 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on March 25, 2014:**

- Deletes “brokers” from the provisions regulating malt beverages;
- Allows malt beverage tasting for:
 - Vendors licensed for on-premises consumption; or
 - Vendors licensed for off-premises consumption if the premises meets certain conditions;
- Provides restrictions and requirements for the conduct of tastings;
- Prohibits certain parties from paying a fee to a vendor in return for hosting a tasting;
- Provides for liability of certain parties that contract with third-parties to conduct tastings on their behalf;
- Allows vendors to conduct a tasting on their own premises using malt beverages from their own inventory; and
- Prohibits certain parties from engaging in cooperative advertising with a vendor.

B. Amendments:

None.

By Senator Detert

28-00451-14

2014470__

1 A bill to be entitled
2 An act relating to malt beverages; amending s. 561.42,
3 F.S.; removing the prohibition on beer samplings at
4 the premises of certain vendors; creating s. 563.09,
5 F.S.; authorizing malt beverage tastings upon certain
6 licensed premises; providing an effective date.

7

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

9

10 Section 1. Paragraph (e) of subsection (14) of section
11 561.42, Florida Statutes, is amended to read:

12 561.42 Tied house evil; financial aid and assistance to
13 vendor by manufacturer, distributor, importer, primary American
14 source of supply, brand owner or registrant, or any broker,
15 sales agent, or sales person thereof, prohibited; procedure for
16 enforcement; exception.—

17 (14) The division shall adopt reasonable rules governing
18 promotional displays and advertising, which rules shall not
19 conflict with or be more stringent than the federal regulations
20 pertaining to such promotional displays and advertising
21 furnished to vendors by distributors, manufacturers, importers,
22 primary American sources of supply, or brand owners or
23 registrants, or any broker, sales agent, or sales person
24 thereof; however:

25 ~~(c) Manufacturers, distributors, importers, brand owners,~~
26 ~~or brand registrants of beer, and any broker, sales agent, or~~
27 ~~sales person thereof, shall not conduct any sampling activities~~
28 ~~that include tasting of their product at a vendor's premises~~
29 ~~licensed for off-premises sales only.~~

28-00451-14

2014470__

30 Section 2. Section 563.09, Florida Statutes, is created to
31 read:

32 563.09 Malt beverage tastings.—A licensed distributor of
33 malt beverages, or any vendor, may conduct malt beverage
34 tastings upon any licensed premises authorized to sell malt
35 beverages by package or for consumption on premises without
36 being in violation of s. 561.42 if the conduct of the malt
37 beverage tasting is limited to and directed toward the general
38 public of the age of legal consumption.

39 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2014

Meeting Date

Topic _____

Bill Number SB 470
(if applicable)

Name JOSE GONZALEZ

Amendment Barcode _____
(if applicable)

Job Title DIR. STATE AFFAIRS

Address 907 CASSWADE DR

Phone 294-4057

Street

TALLAHASSEE, FL 32312

City

State

Zip

E-mail JOSE.GONZALEZ
@AMHENSEN-BUSCH
COM

Speaking: For Against Information

Representing AMHENSEN-BUSCH

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Malt Beverages

Bill Number SB 470
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 W Adams

Phone 224-7173

Tally FL 32301
City State Zip

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

S-25-14

Meeting Date

Topic Malt Beverage Tastings

Bill Number 470
(if applicable)

Name Jon Costello

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 119 S. Monroe St

Phone 766-8654

Street

Tallahassee

City

State

Zip

E-mail jon@reuphlaw.com

Speaking: For Against Information

Representing Miller Coors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.25.14

Meeting Date

Topic Malt Beverages (as amended)

Bill Number SB 470 (CS)
(if applicable)

Name Jessica Love

Amendment Barcode _____
(if applicable)

Job Title Government Consultant

Address P.O. Box 11189

Phone 850.577.9090

Street

Tallahassee, FL 32302

City

State

Zip

E-mail jessica.lve@gray-robinson.com

Speaking: For Against Information

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2014

Meeting Date

Topic Malt Beverage Tastings

Bill Number SB 470
(if applicable)

Name Meridith Gould

Amendment Barcode _____
(if applicable)

Job Title Director, Meetings and Membership

Address 110 South Monroe Street, Suite B

Phone 850.222.8960

Tallahassee, Florida 32312
Street City State Zip

E-mail meridith@florida
beer.org

Speaking: For Against Information

Representing Beer Industry 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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 5, 2014

I respectfully request that **Senate Bill #470**, relating to Malt Beverages, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1240

INTRODUCER: Senator Margolis

SUBJECT: Public Records/Personal Financial Statement/Contract Bidding

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 1240 revises an exemption from public records requirements for financial statements that a governmental entity or agency requires a person to submit in order to respond to a competitive solicitation or as a term or condition of a contract.

The bill is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reenacted by the Legislature.

II. Present Situation:

Public Records and Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Exemptions are subject to the Open Government Sunset Review Act,¹³ which prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁵ Section 119.15(3), F.S.

Public Records Exemption – Competitive Solicitation

Current law defines “competitive solicitation” as the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.¹⁶ Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from disclosure requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.¹⁷ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from disclosure requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁸

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from disclosure requirements.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to revise an exemption from public records requirements for a financial statement related to a competitive solicitation and submitted to a governmental entity.

The bill expands the exemption to apply to any governmental entity, rather than solely agencies.

The bill also applies the exemption to any “person” rather than only “prospective bidders.”

The bill applies the exemption to financial statements submitted in response to a competitive solicitation or other public procurement, or as a term or condition of a contract. The exemption currently only applies to statements submitted “in order to prequalify for bidding or for responding to a proposal for a road or other public works project.”

The bill states that the exemption does not apply to a financial statement submitted by a publicly traded corporation or nonprofit organization.

The bill states that the Open Government Sunset Review Act applies and the exemption shall stand repealed on October 2, 2019, unless reenacted by the Legislature.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of July 1, 2014.

¹⁶ Section 119.071(1)(b)1, F.S.

¹⁷ Section 119.071(1)(b)2, F.S.

¹⁸ Section 119.071(1)(b)3, F.S.

¹⁹ Section 119.071(1)(c), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption, thus it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption, thus it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the financial statements of persons responding to a competitive solicitation or public procurement. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill exempts financial statements submitted to governmental entities under certain circumstances from the public records laws, which may encourage more private parties to respond to competitive solicitations or other public procurements.

C. Government Sector Impact:

The bill exempts financial statements submitted to governmental entities under certain circumstances from the public records laws, which may encourage more private parties to respond to competitive solicitations or other public procurements. This may lead to a larger pool of potential contractors offering a wider array of contractual terms, which could result in reduced costs for local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Margolis

35-01326-14

20141240__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; revising an exemption from public
 4 records requirements for a financial statement that a
 5 governmental entity or agency requires a person to
 6 submit in order to respond to a competitive
 7 solicitation or as a term or condition of a contract;
 8 providing exceptions; providing for future review and
 9 repeal of the exemption under the Open Government
 10 Sunset Review Act; providing a statement of public
 11 necessity; providing an effective date.

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

14
 15 Section 1. Paragraph (c) of subsection (1) of section
 16 119.071, Florida Statutes, is amended to read:

17 119.071 General exemptions from inspection or copying of
 18 public records.—

19 (1) AGENCY ADMINISTRATION.—

20 (c) 1. A Any financial statement reflecting a person's
 21 financial activities, which may include, but is not limited to,
 22 a balance sheet, income statement, or cash flow statement that a
 23 governmental entity or an agency requires a person prospective
 24 bidder to submit when in order to prequalify for bidding or for
 25 responding to a competitive solicitation or other public
 26 procurement, or as a term or condition of a contract, proposal
 27 for a road or any other public works project is exempt from s.
 28 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 29 exemption does not apply to a financial statement submitted by a

35-01326-14

20141240__

30 publicly traded corporation or nonprofit organization.

31 2. This paragraph is subject to the Open Government Sunset
32 Review Act in accordance with s. 119.15 and shall stand repealed
33 on October 2, 2019, unless reviewed and saved from repeal
34 through reenactment by the Legislature.

35 Section 2. The Legislature finds that it is a public
36 necessity that a financial statement submitted by a person in
37 order to qualify for or reply to a competitive solicitation, or
38 submitted as a term or condition of a contract, be made exempt
39 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
40 the State Constitution. Many solicitations to provide products
41 or services to governmental entities in the state require
42 persons to submit a financial statement in order to qualify for
43 bidding or to enter into a subsequent contract. However, many
44 innovative, qualified, responsible, and privately held companies
45 keep their financial statements confidential and take extensive
46 measures to prevent their disclosure. When a solicitation
47 requires disclosure of a financial statement that is potentially
48 subject to disclosure to the general public, these companies
49 simply choose not to submit a proposal rather than risk
50 disclosure. The result is a limited pool of proposers. The
51 Legislature finds that holding this material exempt serves the
52 following purposes:

53 (1) Preservation of the government's ability to obtain and
54 examine the financial statement of a person seeking to conduct
55 business with a governmental entity, when relevant, to prove
56 that the person has the capability of delivering products or
57 services as contemplated in the solicitation.

58 (2) Protection for persons required to furnish financial

35-01326-14

20141240__

59 statements to the government by safeguarding them from the
60 competitive disadvantage, or potential for fraudulent credit
61 theft, that could result from disclosure.

62 (3) Assurance that the public receives the benefit of the
63 largest possible pool of qualified, innovative, and responsible
64 persons, including those who hold their financial statements
65 confidential.

66 (4) Alignment of Florida law with federal law and the laws
67 of other states that recognize the need for governmental
68 entities to safeguard financial statements requested of persons
69 responding to competitive solicitations.

70 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Personal Fin. Statement

Bill Number 1240
(if applicable)

Name Leticia Adams

Amendment Barcode _____
(if applicable)

Job Title Senior Policy Director

Address 136 S. Bronough St.
Street
Tall FL 32301
City State Zip

Phone 850 544 6866

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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25

Meeting Date

Topic Public Records/Financial

Bill Number 1240
(if applicable)

Name Cynthia Henderson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 E Jefferson

Phone 800-210-5385

Tallahassee FL 32301
City State Zip

E-mail cjhenderson@me.com

Speaking: For Against Information

Representing Parsons

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14

Meeting Date

Topic Public Records

Bill Number 1240
(if applicable)

Name Richard Watson

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850 222-0006

Street

1 Alachua, FL 32302

E-mail rich@rswatsonandassociates.com

City

State

Zip

Speaking: For Against Information

Representing Associates Builders & Contractors of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Public Records

Bill Number SR 1240
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 W Adams St

Phone 224-7173

Street

Tallahassee 32301

E-mail bbevis@air.com

City

State

Zip

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Senate Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 28, 2014

I respectfully request that **Senate Bill #1240**, relating to public records, be placed on the

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

A handwritten signature in black ink, appearing to read "Gwen Margolis".

Senator Gwen Margolis
Florida Senate, District 35

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 900

INTRODUCER: Community Affairs Committee; Education Committee; and Senator Latvala

SUBJECT: Public-private Partnerships

DATE: March 26, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Fav/CS
2.	Stearns	Yeatman	CA	Fav/CS
3.			AED	
			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 900 authorizes state universities or certain direct-support organizations (DSOs) to utilize public-private partnerships (P3s) as an alternative procurement process to build, upgrade, operate, own, or finance qualifying projects.

The bill provides definitions, legislative findings and intent, procurement procedures, qualification and approval processes for qualifying projects, agreement provisions, fee structures, financing arrangements, powers and duties of state university boards, direct-support organizations, and private entities, and provisions that affirm the applicability of sovereign immunity.

The bill's stated intent is to: encourage investment in the state by private entities; facilitate various bond financing mechanisms, private capital, and other funding sources; and to provide the greatest possible flexibility to public and private entities contracting for the provision of services.

II. Present Situation:

State universities have specific statutory mechanisms to procure and finance capital projects. Both procurement and finance mechanisms are subject to the regulatory oversight of the Board of Governors (BOG). State universities must navigate different procedural requirements under

each of the currently available mechanisms. Even with the various existing mechanisms at their disposal, state universities face a “crisis” in infrastructure and facilities funding.¹

Development Options for State University Capital Projects

State universities have a few options available for pursuing the development of capital projects, including university lease agreements, joint occupancy structures, use of innovative contracting techniques; and the issuance of revenue bonds.²

University Lease Agreements

Pursuant to s. 1013.171, F.S., each university is authorized to:

- Negotiate and enter into agreements to lease land under its jurisdiction to for-profit and non-profit corporations, for the purpose of erecting thereon facilities and accommodations necessary and desirable to serve the needs and purposes of the university, as determined by the system-wide strategic plan adopted by the BOG.
- Enter into agreements with for-profit and nonprofit corporations, whereby income-producing buildings, improvements, and facilities necessary and desirable to serve the needs and purposes of the university, as determined by the system-wide strategic plan adopted by the BOG, are acquired by purchase or lease-purchase by the university. When such agreements provide for lease-purchase of facilities erected on land that is not under the jurisdiction of the university, the agreement shall include as part of the consideration provisions for the eventual ownership of the land and facility by the state. Each university is authorized to use any auxiliary trust funds, available and not otherwise obligated, to pay rent to the owner should income from the facilities not be sufficient in any debt payment period.
- Construct educational facilities on land that is owned by a direct-support organization (DSO), or a governmental agency at the federal, state, county, or municipal level, if the university has acquired a long-term lease for use of the land. If a DSO does not have sufficient land available, the university may acquire a short-term lease from a private landowner or developer.
- Enter into a short-term lease for the use of land and buildings upon which capital improvements may be made.

These agreements must be entered into with an entity resulting from publicly announced competitive bids or proposals, except that, the university may enter into an agreement with a DSO, or a governmental agency at the federal, state, county, or municipal level, which shall enter into subsequent agreements for financing and constructing the project after receiving competitive bids or proposals.³ Any facility constructed, lease-purchased, or purchased under such agreements, whether erected on land under the jurisdiction of the university or not, shall conform to the construction standards and codes applicable to university facilities.⁴ These agreements are also subject to s. 1010.62, F.S., pertaining to revenue bonds and debt.⁵

¹ Florida Board of Governors, Task Force on Facilities Funding – 2012, at 1, *available at* <http://www.flbog.edu/about/taskforce/facilities.php> (last visited March 18, 2014).

² The state university matching grant program has been suspended since 2011. Section 1013.79(12), F.S.

³ Section 1013.171, F.S.

⁴ *Id.*

⁵ *Id.*

Joint Occupancy Structures

For the purpose of implementing jointly financed construction project agreements, or for the construction of combined occupancy structures, any board may purchase, own, convey, sell, lease or encumber airspace or any other interests in property above airspace of the land, provided the lease of airspace for nonpublic use is for such reasonable rent, length of term, and conditions as the board in its discretion may describe.⁶

All proceeds from the sale or lease shall be used by the board or boards receiving the proceeds solely for fixed capital outlay purposes.⁷ These purposes may include the renovation or remodeling of existing facilities owned by the board, or the construction of new facilities.⁸ However, construction of new facilities must be authorized by the Legislature.⁹

Buildings commonly used for both nonpublic and educational uses, that are sold or leased for nonpublic use are subject to applicable regulations pertaining to land use, zoning, construction, fire protection, health, and safety to the same extent such regulations would be applicable to the construction of a building for nonpublic use on the appurtenant land beneath the subject airspace.¹⁰

Any educational facility constructed or leased as part of a joint-occupancy facility is subject to all rules and requirements of the respective boards or departments having jurisdiction over educational facilities.¹¹ Any contract executed by a state university pursuant to this section is subject to s. 1010.62, F.S., pertaining to revenue bonds and debt.¹²

Coordination of Planning with Local Governing Bodies

State policy requires the coordination of planning between boards and local governing boards to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services.¹³

Contracting and Construction Techniques for Educational Facilities

State university boards may contract for the construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities. The procedures the boards may use for doing so include but are not limited to:

- Solicitation of competitive bids;
- Issuance of a design-build contract pursuant to s. 287.055, F.S.;

⁶ Section 1013.19, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 1013.33, F.S.

- Selection of a construction management entity that would be responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project;
- Selection of a program management entity that would be responsible for schedule control, cost control, and coordination in providing or procuring planning, design and construction services; or
- Execution of day labor contracts not exceeding \$280,000 for the construction, renovation, remodeling, or maintenance of existing facilities.¹⁴

Joint Use of Facilities by Multiple State Universities

State law has authorized and created a process by which two or more boards may cooperatively establish a common educational facility to accommodate students.¹⁵

Debt and Financing for State University Capital Projects

Debt to finance state university capital projects may be incurred at different levels and through different structures.¹⁶ Debt may be state-issued debt, university system-issued debt, and university-issued debt.¹⁷ State-issued debt is primarily in the form of Public Education Capital Outlay (PECO) bonds. System-issued debt is limited to Capital Improvement Trust Fund Fee (CITF) bonds.¹⁸

State-Issued Debt (Public Education Capital Outlay)

State-issued debt is backed by various revenue sources including state taxes, general revenue, dedicated revenue sources, and lottery profits.¹⁹ The Legislature must approve state-funded university capital projects.²⁰ Florida has historically provided state funding for university projects with a dedicated revenue source.²¹

According to the staff of the BOG, “[s]tate-issued debt is typically undertaken on behalf of the university system or individual institutions and takes advantage of the full faith and credit of the state as the guarantee for bond payments.”²²

The BOG currently relies on state PECO bonds as the primary source of funding for university construction (i.e., new teaching and research facilities) and building maintenance (i.e., to keep existing buildings functional and to retrofit old buildings for new uses).²³ However, PECO funds

¹⁴ Section 1013.45, F.S.

¹⁵ Section 1013.52, F.S.

¹⁶ Office of Program Policy Analysis and Government Accountability, *Other States Use a Variety of Revenues and Financing Methods to Fund Public University Capital Outlay Projects*, Research Memorandum, at 5 (October 12, 2012) (on file with the Senate Committee on Community Affairs).

¹⁷ *Id.*

¹⁸ Email, Staff of the Board of Governors, (March 10, 2014) (on file with the Senate Committee on Education).

¹⁹ *Id.*

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

²² *Id.* at 6.

²³ Florida Board of Governors, Task Force on Facilities Funding – 2012, *available at* <http://www.flbog.edu/about/taskforce/facilities.php>, State University System, Board of Governors, *FACT SHEET: Public*

cannot be used to construct student life facilities, such as student unions, cafeterias, recreational fields, and fitness centers.²⁴

University System Issued Debt

The BOG can only issue system debt based on revenues from student capital improvement fees, formally known as the Capital Improvement Trust Fund Fee.²⁵ Such debt is subject to specific Legislative authorization in the general appropriations act, and requires approval of the State Board of Administration.²⁶ No new debt has been authorized under the CITF program since 2008.²⁷

The BOG may “issue revenue bonds that are secured by a pledge of revenues from institution enterprises such as dormitories, parking garages, food service, and athletic programs. These bonds are typically used to finance student support facilities, such as student unions, recreation facilities, housing, health and parking facilities.”²⁸

Individual Institution Issued Debt

“Institution debt is typically a revenue bond authorized to fund student support facilities such as student unions, dormitories, or parking garages.”²⁹ Institutional debt is typically backed by student fees and revenues from auxiliary enterprises (such as housing and parking).³⁰ “[A]ny proposal for issuance of institution revenue bonds is reviewed by the State Board of Administration’s Division of Bond Finance and approved by the BOG.”³¹

Debt Structures

“The primary debt structures used to finance projects are general obligation bonds, revenue bonds, and lease/purchase contracts...”³² For example:

- General obligation bonds take advantage of the full faith and credit and the taxing authority of the state to guarantee payment.³³
- Revenue bonds depend on a dedicated revenue source as guarantee for payment.³⁴

Education Capital Outlay (PECO) (July 17, 2012) available at http://flbog.edu/pressroom/_doc/7.2012-PECO-Fact-Sheet-Press-Room.pdf (last visited March 18, 2014).

²⁴ *Id.*

²⁵ Office of Program Policy Analysis and Government Accountability, *Other States Use a Variety of Revenues and Financing Methods to Fund Public University Capital Outlay Projects*, Research Memorandum, at 6 (October 12, 2012) (on file with the Senate Committee on Community Affairs), Email, Staff of the Board of Governors, (March 10, 2014) (on file with the Senate Committee on Education).

²⁶ Email, Staff of the Board of Governors, (March 10, 2014) (on file with the Senate Committee on Education), Office of Program Policy Analysis and Government Accountability, *Other States Use a Variety of Revenues and Financing Methods to Fund Public University Capital Outlay Projects*, Research Memorandum, at 6 (October 12, 2012) (on file with the Senate Committee on Community Affairs).

²⁷ Email, Staff of the Board of Governors, (March 10, 2014) (on file with the Senate Committee on Education).

²⁸ *Id.* at 7.

²⁹ *Id.* at 9.

³⁰ *Id.* at 5.

³¹ *Id.* at 9.

³² *Id.* at 5,

³³ *Id.* at 5.

³⁴ *Id.* at 5.

- Lease/purchase contracts are similar to bonds, but the investor purchases a share of the lease revenues of a program rather than the bond being secured by those revenues.³⁵

Public-Private Partnerships

Public-private partnerships are in use nationally, even for state universities. While generally authorized and in use in Florida, P3s are not specifically authorized in law for use by state universities.

P3s Nationally

A P3 is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.³⁶ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.³⁷ In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³⁸

There are different types of P3s with varying levels of private sector involvement. For example:

- A Design-Build-Finance-Operate transaction involves a grant made by the government to a private sector partner of the right to develop a new piece of public infrastructure.³⁹ The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by the government.⁴⁰ The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a “shadow toll” or “availability charge”).⁴¹ Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.⁴²
- An Unsolicited Proposal Procurement Model allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁴³ Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.⁴⁴ A local government’s “acceptance” of a proposal results in the publishing of a notice to other prospective proposers for the project.⁴⁵ These other proposers have a certain amount of time in which to submit a competing proposal, after

³⁵ *Id.* at 5.

³⁶ See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on March 18, 2014).

³⁷ See generally The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: <http://www.ncppp.org/ppp-basics/7-keys/> (last visited on March 18, 2014).

³⁸ *Id.*

³⁹ See The Oregon Department of Transportation, *The Power of Public-Private Partnerships*, available at: <http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf> (last visited March 18, 2014).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See *Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, 2, available at <http://documents.jdsupra.com/3c55cef3-3a4f-45d7-b199-b658fa2f1443.pdf> (last visited March 18, 2014).

⁴⁴ *Id.*

⁴⁵ Section 287.05712(4)(b), F.S.

which the local government considers and ranks all of the proposals, including the initial proposal that began the process.⁴⁶

State University Use of P3s Nationally

According to the Office of Program Policy Analysis and Government Accountability, a P3 “can provide universities access to additional capital resources, spread risk, and offer expertise in specialized areas of construction, such as medical centers or housing; however, the contracts covering these arrangements are often complex and private partners may not live up to their obligations.”⁴⁷

Universities in other states typically form P3s to construct dining, housing, parking, dormitories or other support facilities. Some universities in other states have begun to use them to construct research laboratories and classrooms.⁴⁸

P3s in Florida

In 2013, the Legislature created s. 287.0512, F.S., which, in part, created an alternative procurement process as well as requirements that must be met by responsible public entities⁴⁹ seeking to enter into P3s to facilitate construction of public-purpose projects.⁵⁰ However, this law is not applicable to state universities.⁵¹

State University Use of P3s in Florida

Despite the lack of specific statutory authority directly authorizing or regulating P3s for state universities, some state universities in Florida are nevertheless utilizing P3s. For example:

- Florida Atlantic University used a P3 to build a dormitory.⁵²
- Florida State University is using, and has attempted, P3s for various fields.⁵³

⁴⁶ Section 287.05712(4)(b) and (6)(c), F.S.

⁴⁷ Office of Program Policy Analysis and Government Accountability, *Other States Use a Variety of Revenues and Financing Methods to Fund Public University Capital Outlay Projects*, Research Memorandum, at 10 (October 12, 2012) (on file with the Senate Committee on Community Affairs).

⁴⁸ *Id.*

⁴⁹ Section 287.05712(1)(j), F.S. “Responsible public entity” means “a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.” *Id.*

⁵⁰ See Staff of the Florida House of Representatives, *Legislative Bill Analysis for CS/CS/HB 85* (2013). Under this law, P3s may be used for facilities or projects that serve a public purpose, including but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, recreational facility, an improvement of a building (including equipment) that will principally be used by the public-at-large or that supports a service delivery system in the public sector, or a water, wastewater, or surface water management facility or other related infrastructure. See Section 287.05712(1)(i), F.S.

⁵¹ Staff of the Board of Governors, *Legislative Bill Analysis for SB 900*, at 3 (February 21, 2014).

⁵² Office of Program Policy Analysis and Government Accountability, *Other States Use a Variety of Revenues and Financing Methods to Fund Public University Capital Outlay Projects*, Research Memorandum, at 12 (October 12, 2012) (on file with the Senate Committee on Community Affairs).

⁵³ “Florida State University participated in a [P3] with the company Digital Domain. The company provided the facilities for students in West Palm Beach to train in digital animation. *Id.* at 13, footnote 21, *The Gradebook, FSU’s announcement is the latest in trend of public-private partnerships at universities*, <http://www.tampabay.com/blogs/gradebook/content/fsu-announcement-latest-trend-public-private-partnerships-universities> (last viewed March 8, 2014).

- The University of West Florida created Business Enterprises, Inc. as a DSO to build and manage P3s to help the university accomplish its goals.⁵⁴
- Florida Polytechnic University entered into a P3 for the construction of student housing.⁵⁵

University Direct-Support Organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.⁵⁶ A DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university. A DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best interest of the state.⁵⁷ DSOs serve a role in raising private support for university academic, research, and athletic activities.⁵⁸

State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.⁵⁹ DSO boards are also subject to public records and public meetings laws.⁶⁰

A DSO must provide for an annual financial audit of the organization's accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law⁶¹ and by the university board of trustees.⁶²

III. Effect of Proposed Changes:

Section 1 provides definitions, legislative findings and intent, procurement procedures, project feasibility criteria, procedures for approval of agreements, required agreement provisions, financing arrangements, responsibilities of the private entity, provisions governing the expiration or termination of agreements, a statement of authority, a statement affirming the applicability of sovereign immunity, a requirement of an annual report, and rulemaking authority.

⁵⁴ UWF Business Enterprises, Inc., *Direct Support for the University*, <http://uwf.edu/bei/about.html> (last viewed March 18, 2014).

⁵⁵ Florida Polytechnic University, *Florida Polytechnic University Awards Contract For Student Housing*, <https://floridapolytechnic.org/news-item/florida-polytechnic-university-awards-contract-for-student-housing/> (last viewed March 18, 2014).

⁵⁶ Section 1004.28(1)(a)1.-2., F.S.

⁵⁷ Section 1004.28(1)(a)2.-3., F.S.

⁵⁸ Florida Board of Governors, *2013 Agency Bill Analysis for HB 359* (Feb. 14, 2013), at 1. HB 359

⁵⁹ Chapters 119 and 286, Florida Statutes. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law).

⁶⁰ Section 1004.28, F.S.; *see also Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att'y Gen. Fla. 05-27 (2005); Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

⁶¹ Section 11.45(8), F.S.

⁶² Section 1004.28(5), F.S.

Legislative Findings and Intent

The bill declares that there is a public need for construction or improvement of facilities that are used predominantly for a public purpose and that it is in the public's interest to provide for the construction or improvement of such facilities.⁶³ The bill states that the need for timely and cost-effective acquisition and operation of such facilities cannot be met by existing procurement methods.

The bill declares it is the Legislature's intent to encourage investments in the state by private entities, to facilitate various bond financing mechanisms, and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

Procurement Procedures

A state university board or DSO may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities to build, upgrade, operate, own, or finance facilities.

The BOG may establish a reasonable application fee for the submission of an unsolicited proposal. A board or DSO may engage the services of a private consultant to assist in the evaluation. The BOG may also establish a reasonable fee to cover the costs of evaluating all other proposals received by a board or DSO as part of a competitive procurement process.

If an unsolicited proposal is received and the board or DSO intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the board or DSO must publish a notice in a newspaper of general circulation at least once a week for two weeks stating that the board has received a proposal and will accept other proposals for the same project.

Proposal Requirement and Approval Process

The board must consider various factors before approving the proposed project and in reviewing and ranking proposals, and the private entity's unsolicited proposal must provide certain information and meet specified requirements.

Unsolicited Proposal Requirements

Unless waived by the board or DSO, an unsolicited proposal must be accompanied by:

- A description of the qualifying project;
- A description of the method by which the private entity proposes to secure the necessary property interests that are required to complete the project (if applicable);
- A description of the private entity's general plans for financing the project;
- The name and address of a person who may be contacted for additional information;
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement; and

⁶³ Universities might be implicitly allowed to expand their focus from what is necessary and desirable to serve the needs and purposes of the university (or its students), to what serves a public need or benefit derived from the type of qualifying project that the private entity proposes.

- Additional material that the board or DSO reasonably requests.

In considering an unsolicited proposal, the board or DSO may require the private entity to provide a technical study prepared by a nationally recognized expert with experience in preparing analyses for bond rating agencies. In evaluating the technical study, the board or DSO may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

After the public notification period has expired in the case of an unsolicited proposal, or upon receipt of all proposals if using the traditional process for competitive procurement, the board or DSO must rank the proposals received in order of preference. The board or DSO may then begin negotiations for a comprehensive agreement with the highest-ranked firm, followed by negotiations with successively ranked firms (if necessary) until arriving at a satisfactory agreement. The board or DSO may reject all proposals at any point in the process.

Project Feasibility

Prior to entering into a comprehensive agreement, a board or DSO must conduct an analysis of the feasibility and desirability of the project and shall develop sufficient information to determine:

- The agreement is in the best interest of the public, state, or university;
- The conformity of the project with the master plan of the university and a determination that the project is essential to the university's core mission;
- The need for the project based on quantitative metrics;
- The amount and source of funds to be used to fully fund the capital, operation, maintenance, or other expenses under the agreement;
- The cost of any investment to be made under the agreement by the board or DOS;
- The economic and financial feasibility of the project;
- That the projected demand for use of the project is adequate in relation to the project's cost;
- The expected return on investment or other appropriate quantitative measure for a non-revenue-generating project;
- That the cost of the project is reasonable in relation to similar facilities;
- The financial, operational, or technological risk associated with the project;
- That any increase in the cost of financing the project over the cost of financing the project under s. 1010.62, F.S., will be offset by quantifiable savings in operational costs of other activities and specifies the amount of such savings;
- Any impact to the state's finances of undertaking the project;
- The impact of the agreement on similar activities of the state university or DSO;
- The anticipated use of money to be received by the state university or DSO;
- The relationship between the source of any funds committed by the board or DSO and the project or activities proposed to be funded under the agreement;
- The private entity has the available sources of funding or other financial resources necessary to carry out the agreement;
- That the staff of the private entity have sufficient experience and qualifications to perform the project;

- That no director, officer, partner, owner, or other individual with direct and significant control over the policy of the private entity has been convicted of corruption or fraud; and
- Any other factors determined to be appropriate by the board, DSO, or the BOG.

Approval of Comprehensive Agreements

All comprehensive agreements are contingent upon approval by the BOG. A comprehensive agreement between a DSO and a private entity must be approved by the university board prior to submission to the BOG.

In addition to approval of the BOG, the approval of the Governor and Cabinet, in their role as the governing board of the Division of Bond Finance, is required for any comprehensive agreement that:

- Has a term of over ten years, including any renewals or extensions;
- Provides for an up-front payment from the private entity to the board or DSO which constitutes more than 10 percent of the total compensation anticipated to be paid by the private entity to the board or DSO over the life of the agreement;
- Provides for the creation of debt of the board or DSO;
- Pledges or uses revenues to secure or pay amounts due under the agreement; or
- Is expected to yield more than \$10 million to the board or DSO.

For agreements expected to yield more than \$10 million, the state university must provide a summary of the proposal to the BOG, the Governor, the members of the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. If the President or Speaker objects to the proposed agreement in writing within 14 days after receipt of the summary, the board or DSO may not proceed with the agreement unless all objections are resolved.

The BOG must establish a process and informational requirements for the evaluation and approval of comprehensive agreements.

Agreements

Comprehensive Agreement

Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the board or DSO.

The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, or other security in connection with the development or operation of the qualifying project. Construction bonds must comply with ss. 255.05 and 1013.47, F.S.;
- Board or DSO review and approval of the design of the qualifying project. This does not require the private entity to complete the design of the project before the execution of the comprehensive agreement;
- Inspection of the qualifying project by the board or DSO to ensure the private entity's activities are acceptable to the board;
- Maintenance of a policy of public liability insurance or self-insurance;

- Monitoring of the maintenance practices of the private entity by the board or DSO to ensure the project is properly maintained;
- Periodic filing of financial statements by the private entity;
- Procedures governing the rights and responsibilities of the board or DSO and the private entity in the course of the construction, and operation of the qualifying project and in the event of a termination of the agreement or a material default. The procedures must include:
 - Conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the board or DSO; and,
 - Transfer or purchase of property or other interests of the private entity by the board or DSO.
- Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions;
- Duties of the private entity, including terms and conditions that the board or DSO determines serve the public purpose of this section;
- A limit on the term of the comprehensive agreement to 30 years, including all renewal terms;
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity;
- A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the board or DSO.

A comprehensive agreement may not obligate the full faith and credit of the state, a state university or the BOG, but shall only be secured by the revenues of the board or DSO pledged for such a purpose. Revenues of a board or DSO may not be pledged to secure or be used to make payments on or in relation to a comprehensive agreement. No debt of a board or DSO may be created except as provided in s. 1010.62, F.S., and only the revenues authorized to be used pursuant to s. 1010.62, F.S., may be used to secure or pay obligations related to such an agreement.

Financing Arrangements

The private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement must be paid in full at the applicable closing that transfers ownership or operation of the facility to the board or DSO at the conclusion of the term of the comprehensive agreement. In the event of a material default by the private entity, the board or DSO will assume ownership or operation of the qualifying project pursuant to the terms of the comprehensive agreement.

The board or DSO may use innovative finance techniques associated with a P3 including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the board or DSO may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the board or DSO, including the

proceeds of debt issuances.⁶⁴ A financing agreement may not subject the board's or DSO's facility to liens in violation of s. 11.066(5), F.S.

Responsibilities of the Private Entity under an Agreement

The private entity shall, in accordance with the comprehensive agreement:

- Develop or operate the project in a manner that is acceptable to the board or DSO;
- Maintain or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement;
- Cooperate with the board or DSO in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the board or DSO;
- Comply with the comprehensive agreement and a lease or service contract.

Each private facility must comply with the requirements of federal, state, and local laws and plans as well as the conditions and standards of the board of DSO, as applicable.

Additional Services and Agreements

The board or DSO may provide services to the private entity. An agreement for maintenance and other services must provide for full reimbursement for services rendered for qualifying projects.

A private entity may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the board or DSO pursuant to the comprehensive agreement and the services do not differ in kind from those provided under the agreement.

Expiration or Termination of the Comprehensive Agreement

Upon the expiration or termination of a comprehensive agreement, the board or DSO may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project.

Revenues in excess of the costs for operation and maintenance costs may be paid to investors and lenders to satisfy payment obligations under their respective agreements if allowed under the provisions of the comprehensive agreement.

A board or DSO may terminate with cause and without prejudice a comprehensive agreement and may exercise other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement.

The assumption of the development or operation of the qualifying project does not obligate the board or DSO to pay an obligation of the private entity from sources other than revenues from the qualifying project.

⁶⁴ The bill does not allow bonding of tuition. Email, Staff of the Board of Governors (March 9, 2014) (on file with the Senate Committee on Education). Additionally, while not specified, the provisions of s. 1013.78, F.S., which require prior approval of projects by the Legislature if the state will be asked for operating funds for the project, still appear to apply. Staff of the Board of Governors, *Legislative Bill Analysis for SB 900*, at 3 (February 21, 2014).

Sole Authority

This section provides the sole authority for a state university or DSO to enter into a comprehensive agreement.

Sovereign Immunity

A comprehensive agreement may not be construed as waiving the sovereign immunity of the state or as a grant of sovereign immunity to a private entity.

Annual Report

For any comprehensive agreement executed by a board or DSO after this bill becomes law, the university must prepare an annual report to the BOG which updates information provided for the initial approval of the P3 and provides any other information required by the BOG. The format and specific timeframe for the report shall be provided by the BOG. However, the initial annual report shall be filed no later than November 30 after the P3 has been in effect for one full fiscal year.

Rules

The BOG may adopt such rules as may be necessary for carrying out all of the requirements of this section and may do all things necessary to carry out the powers granted under this section. The BOG may establish additional restrictions relating to P3s but may not take any action which would reduce the requirements of this section.

Applicable Laws

The bill provides that it does not waive any requirement in ss. 255.103,⁶⁵ 287.055,⁶⁶ or 1013.45,⁶⁷ F.S., if applicable.

Section 2 of the bill provides an effective date of July 1, 2014.

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

None.

B. Public Records/Open Meetings Issues:

None.

⁶⁵ Pertaining to construction management or program management entities.

⁶⁶ Pertaining to the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.

⁶⁷ Pertaining to education facilities contracting and construction techniques.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

According to the BOG:⁶⁸

The potential cost savings are indeterminable at this time. However, in general, potential cost savings are most likely to be realized on a life-cycle cost basis, rather than up front. It is not expected that P3s will result in lower interest rates. Rather, potential savings may be realized in that partnership agreements legally commit both parties to the long-term maintenance of the subject facilities. Making repairs on a scheduled basis can result in long-term cost savings. The ability to defer critical maintenance items due to short-term budget obligations will be significantly reduced if public partnership agreements are properly structured and adequately enforced.

In reviewing unsolicited proposals, boards may be required to utilize time and resources reviewing projects that are not identified as priorities, which may take time and resources away from projects that are identified priorities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1013.505 of the Florida Statutes.

⁶⁸ Staff of the Board of Governors, *Legislative Bill Analysis for SB 900*, at 2-3 (February 21, 2014).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on March 25, 2014:**

- Updates the “Definitions” section of the bill;
- Authorizes university DSOs to engage in P3s;
- Removes the provisions related to Interim Agreements;
- Requires the approval of the Governor and Cabinet sitting as the governing board of the Division of Bond Finance for certain projects;
- Requires the university to present to the Cabinet and Legislature prior to engaging in agreements that yield more than \$10 million to the university. Provides that an agreement that is objected to by one of the above parties may not be finalized;
- Requires the BOG to set up a new process for evaluating potential P3 agreements;
- Limits the term of P3s to 30 years;
- Prohibits the obligation of the full faith and credit of the state as part of a P3 agreement;
- Removes the authority for a private entity engaged in a P3 with a university to levy fees on the public for use of a facility that is the product of the P3;
- Removes the requirement that any liens on the property be paid off at the time that ownership of the property is transferred from the P3 to the university;
- States that the section created by this bill provides the sole authority for a university board to enter into a P3;
- Requires a university board engaged in a P3 to submit an annual report to the BOG; and
- Authorizes the BOG to adopt rules related to P3s.

CS by Education on March 11, 2014:

Provides that the new law, s. 1013.505, F.S., does not waive any requirement in ss. 255.103, 287.055, or 1013.45, F.S., if those laws are applicable.

B. Amendments:

None.

By the Committee on Education; and Senator Latvala

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1 A bill to be entitled
2 An act relating to public-private partnerships;
3 creating s. 1013.505, F.S.; providing definitions;
4 providing legislative findings and intent relating to
5 the construction or improvement by private entities of
6 facilities or projects used predominantly for a public
7 purpose; providing for partnerships between state
8 universities and private entities; providing
9 procurement procedures for a state university board of
10 trustees, including proposals for a qualifying project
11 and a comprehensive agreement for partnership
12 transactions; providing requirements for project
13 approval; providing project qualifications and
14 process; providing requirements for interim and
15 comprehensive agreements between a board of trustees
16 and a private entity; providing for use fees;
17 providing for various financing sources for projects;
18 providing powers and duties of private entities;
19 providing for expiration or termination of a
20 comprehensive agreement; providing for the
21 applicability of sovereign immunity for boards of
22 trustees with respect to qualified projects; providing
23 for construction of the act; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 1013.505, Florida Statutes, is created
29 to read:

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30 1013.505 Public-private partnerships; state universities
31 and private entities.-

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

33 (a) "Board" means a state university board of trustees.

34 (b) "Develop" means to plan, design, finance, lease,
35 acquire, install, construct, or expand.

36 (c) "Fees" means charges imposed by the private entity of a
37 qualifying project for use of all or a portion of such
38 qualifying project pursuant to a comprehensive agreement.

39 (d) "Lease payment" means any form of payment, including a
40 land lease, by a board to the private entity of a qualifying
41 project for the use of the project.

42 (e) "Material default" means a nonperformance of its duties
43 by the private entity of a qualifying project which jeopardizes
44 adequate service to the public from the project.

45 (f) "Operate" means to finance, maintain, improve, equip,
46 modify, or repair.

47 (g) "Private entity" means a natural person, corporation,
48 general partnership, limited liability company, limited
49 partnership, joint venture, business trust, public-benefit
50 corporation, nonprofit entity, or other private business entity.

51 (h) "Proposal" means a plan for a qualifying project with
52 detail beyond a conceptual level for which terms such as fixed
53 costs, payment schedules, financing, deliverables, and project
54 schedule are defined.

55 (i) "Qualifying project" means a facility or project that
56 serves a public educational, research, housing, parking,
57 infrastructure, recreational, or cultural purpose and that is
58 used or will be used by a state university or an improvement,

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59 including equipment, of a facility that will be principally used
60 by a state university in serving the university's core mission.

61 (j) "Revenues" means the income, earnings, user fees, lease
62 payments, or other service payments relating to the development
63 or operation of a qualifying project, including, but not limited
64 to, money received as grants or otherwise from the Federal
65 Government, a public entity, or an agency or instrumentality
66 thereof to fund the qualifying project, and gifts from private
67 donors.

68 (k) "Service contract" means a contract between a board and
69 a private entity which defines the terms of the services to be
70 provided with respect to a qualifying project.

71 (2) LEGISLATIVE FINDINGS AND INTENT.-

72 (a)1. The Legislature finds that there is a public need for
73 the construction or improvement of facilities that are used
74 predominantly for public purposes and that it is in the public's
75 interest to provide for the construction or improvement of such
76 facilities.

77 2. The Legislature also finds that:

78 a. There is a public need for timely and cost-effective
79 acquisition, design, construction, improvement, renovation,
80 expansion, equipping, maintenance, operation, implementation,
81 and installation of projects serving a public purpose, including
82 educational and auxiliary facilities and projects within the
83 state which serve a public need and purpose, and that such
84 public need may not be wholly satisfied by existing procurement
85 methods.

86 b. There are inadequate resources to develop new
87 educational and auxiliary facilities and projects for the

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88 benefit of residents of this state, and that a public-private
89 partnership has demonstrated that it can meet the needs by
90 improving the schedule for delivery, lowering the cost, and
91 providing other benefits to the public.

92 c. There may be state and federal tax incentives that
93 promote partnerships between public and private entities to
94 develop and operate qualifying projects.

95 d. A procurement under this section serves the public
96 purpose of this section if such procurement facilitates the
97 timely development or operation of a qualifying project.

98 (b) It is the intent of the Legislature to encourage
99 investment in the state by private entities; to facilitate
100 various bond financing mechanisms, private capital, and other
101 funding sources for the development and operation of qualifying
102 projects, including expansion and acceleration of such financing
103 to meet the public need; and to provide the greatest possible
104 flexibility to public and private entities contracting for the
105 provision of public services.

106 (3) PROCUREMENT PROCEDURES.—A board may receive unsolicited
107 proposals or may solicit proposals for qualifying projects and
108 may thereafter enter into an agreement with a private entity, or
109 a consortium of private entities, to develop, improve, operate,
110 own, or finance facilities. A copy of all proposals received by
111 a board shall be submitted to the Board of Governors.

112 (a) A board may establish a reasonable application fee for
113 the submission of an unsolicited proposal under this section.
114 The fee must be sufficient to pay the costs of evaluating the
115 proposal. A board may engage the services of a private
116 consultant to assist in the evaluation.

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117 (b) A board may request a proposal from private entities
118 for a qualified project. If the board receives an unsolicited
119 proposal for a qualified project and the board intends to enter
120 into a comprehensive agreement for the project described in such
121 unsolicited proposal, the board shall publish notice in a
122 newspaper of general circulation at least once a week for 2
123 weeks stating that the board has received a proposal and will
124 accept other proposals for the same project. The timeframe
125 within which the board may accept other proposals shall be
126 determined on a project-by-project basis based upon the
127 complexity of the project and the public benefit to be gained by
128 allowing a longer or shorter period of time within which other
129 proposals may be received; however, the timeframe for allowing
130 other proposals must be at least 21 days, but no more than 120
131 days, after the initial date of publication.

132 (c) A board may enter into a comprehensive agreement
133 subject to approval by the Board of Governors and pursuant to
134 guidelines adopted by the Board of Governors for public-private
135 partnership transactions.

136 (d) In considering proposals for a public-private
137 partnership, the board shall determine whether the proposed
138 project:

- 139 1. Is in the public's best interest.
- 140 2. Is for a facility that is owned by the board or for a
141 facility for which ownership will be conveyed to the board.
- 142 3. Has adequate safeguards in place to ensure that
143 additional costs or service disruptions are not imposed on the
144 public in the event of material default or cancellation of the
145 agreement by the board.

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146 4. Has adequate safeguards in place to ensure that the
147 board or private entity has the opportunity to add capacity to
148 the proposed project or other facilities serving similar
149 predominantly public purposes.

150 5. Will be owned by the board upon completion or
151 termination of the agreement and upon payment of the amounts
152 financed.

153 6. Is supported by a reasonable finance plan that is
154 consistent with subsection (9); the project cost; revenues by
155 source; available financing; major assumptions; if governmental
156 funds are assumed in order to deliver a cost-feasible project,
157 internal rate of return on private investments; and a total
158 cash-flow analysis beginning with the implementation of the
159 project and extending for the term of the agreement.

160 (e) In considering an unsolicited proposal, the board may
161 require from the private entity a technical study prepared by a
162 nationally recognized expert with experience in preparing
163 analyses for bond rating agencies. In evaluating the technical
164 study, the board may rely upon internal staff reports prepared
165 by personnel familiar with the operation of similar facilities
166 or the advice of external advisors or consultants who have
167 relevant experience.

168 (4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
169 from a private entity for approval of a qualifying project must
170 be accompanied by the following material and information, unless
171 waived by the board:

172 (a) A description of the qualifying project, including the
173 conceptual design of the facilities or a conceptual plan for the
174 provision of services, and a schedule for the initiation and

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175 completion of the qualifying project.

176 (b) If applicable, a description of the method by which the
177 private entity proposes to secure the necessary property
178 interests that are required for the qualifying project.

179 (c) A description of the private entity's general plans for
180 financing the qualifying project, including the sources of the
181 private entity's funds and the identity of a dedicated revenue
182 source or proposed debt or equity investment on behalf of the
183 private entity.

184 (d) The name and address of a person who may be contacted
185 for additional information concerning the proposal.

186 (e) The proposed user fees, lease payments, or other
187 service payments over the term of a comprehensive agreement and
188 the methodology for and circumstances that would allow changes
189 to the user fees, lease payments, or other service payments over
190 time.

191 (f) Additional material or information that the board
192 reasonably requests.

193 (5) PROJECT QUALIFICATION AND PROCESS.—

194 (a) The private entity must meet the minimum standards
195 contained in the board's regulations or guidelines for
196 qualifying professional services and contracts for traditional
197 procurement projects.

198 (b) The board must:

199 1. Ensure that provision is made for the private entity's
200 performance and payment of subcontractors, including, but not
201 limited to, surety bonds, letters of credit, parent company
202 guarantees, and lender and equity partner guarantees. For the
203 components of the qualifying project which involve construction

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204 performance and payment, bonds are required and are subject to
205 the recordation, notice, suit limitation, and other requirements
206 of s. 255.05.

207 2. Ensure the most efficient pricing of the security
208 package that provides for the performance and payment of
209 subcontractors.

210 3. Ensure that provision is made for the transfer of the
211 private entity's obligations if the comprehensive agreement is
212 terminated or a material default occurs.

213 (c) After the public notification period has expired in the
214 case of an unsolicited proposal, the board shall rank the
215 proposals received in order of preference. In ranking the
216 proposals, the board may consider factors including, but not
217 limited to, professional qualifications, general business terms,
218 innovative design techniques or cost-reduction terms, and
219 finance plans. The board may then begin negotiations for a
220 comprehensive agreement with the highest-ranked private entity.
221 If the board is not satisfied with the results of the
222 negotiations, the board may terminate negotiations with the
223 private entity and negotiate with the second-ranked or
224 subsequent-ranked private entities, in the order consistent with
225 this procedure. If only one proposal is received, the board may
226 negotiate in good faith, and if the board is not satisfied with
227 the results of the negotiations, the board may terminate
228 negotiations with the private entity. Notwithstanding this
229 paragraph, the board may reject all proposals at any point in
230 the process until a contract with the private entity is
231 executed.

232 (d) The board shall perform an independent analysis of the

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233 proposed public-private partnership which must demonstrate the
234 cost-effectiveness and overall public benefit before the
235 procurement process is initiated or before the contract is
236 awarded.

237 (e) The board may approve the development or operation of a
238 qualifying project, or the design or equipping of a qualifying
239 project that is developed or operated, if:

240 1. There is a public need for or benefit derived from the
241 type of qualifying project that the private entity proposes and
242 the project is included in the university's master plan.

243 2. The estimated cost of the qualifying project is
244 reasonable in relation to similar facilities.

245 3. The private entity's plans will result in the timely
246 acquisition, design, construction, improvement, renovation,
247 expansion, equipping, maintenance, or operation of the
248 qualifying project.

249 (f) The board may charge a reasonable fee to cover the
250 costs of processing, reviewing, and evaluating the proposal,
251 including, but not limited to, reasonable attorney fees and fees
252 for financial and technical advisors or consultants and for
253 other necessary advisors or consultants.

254 (g) Upon approval of a qualifying project, the board shall
255 establish a date for the commencement of activities related to
256 the qualifying project. The board may extend the commencement
257 date.

258 (h) Approval of a qualifying project by the board is
259 subject to entering into a comprehensive agreement with the
260 private entity.

261 (6) INTERIM AGREEMENT.—Before or in connection with the

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262 negotiation of a comprehensive agreement, the board may enter
263 into an interim agreement with the private entity proposing the
264 development or operation of the qualifying project. An interim
265 agreement does not obligate the board to enter into a
266 comprehensive agreement. The interim agreement is discretionary
267 with the parties and is not required for a qualifying project
268 for which the parties proceed directly to a comprehensive
269 agreement. An interim agreement must be limited to provisions
270 that:

271 (a) Authorize the private entity to commence activities for
272 which it may be compensated related to the proposed qualifying
273 project, including, but not limited to, project planning and
274 development, design, environmental analysis and mitigation,
275 survey, other activities concerning any part of the proposed
276 qualifying project, and ascertaining the availability of
277 financing for the proposed facility or facilities.

278 (b) Establish the process and timing of the negotiation of
279 the comprehensive agreement.

280 (c) Contain such other provisions related to an aspect of
281 the development or operation of a qualifying project which the
282 board and the private entity deem appropriate.

283 (7) COMPREHENSIVE AGREEMENT.—

284 (a) Before developing or operating the qualifying project,
285 the private entity must enter into a comprehensive agreement
286 with the board. The comprehensive agreement must provide for:

287 1. Delivery of performance and payment bonds, letters of
288 credit, or other security acceptable to the board in connection
289 with the development or operation of the qualifying project in
290 the form and amount satisfactory to the board. For the

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291 components of the qualifying project which involve construction,
292 the form and amount of the bonds must comply with s. 255.05.

293 2. Review of the design for the qualifying project by the
294 board and, if the design conforms to standards acceptable to the
295 board, the approval of the board. This subparagraph does not
296 require the private entity to complete the design of the
297 qualifying project before the execution of the comprehensive
298 agreement.

299 3. Inspection of the qualifying project by the board to
300 ensure that the private entity's activities are acceptable to
301 the board in accordance with the comprehensive agreement.

302 4. Maintenance of a policy of public liability insurance, a
303 copy of which must be filed with the board and accompanied by
304 proofs of coverage, or self-insurance, each in the form and
305 amount satisfactory to the board and reasonably sufficient to
306 ensure coverage of tort liability to the public and employees
307 and to enable the continued operation of the qualifying project.

308 5. Monitoring by the board of the maintenance practices to
309 be performed by the private entity to ensure that the qualifying
310 project is properly maintained.

311 6. Periodic filing by the private entity of the appropriate
312 financial statements that pertain to the qualifying project.

313 7. Procedures that govern the rights and responsibilities
314 of the board and the private entity in the course of the
315 development, construction, and operation of the qualifying
316 project and in the event of the termination of the comprehensive
317 agreement or a material default by the private entity. The
318 procedures must include conditions that govern the assumption of
319 the duties and responsibilities of the private entity by an

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320 entity that funded, in whole or part, the qualifying project or
321 by the board and must provide for the transfer or purchase of
322 property or other interests of the private entity by the board.

323 8. Agreement on negotiated user fees. Such fees must be the
324 same for persons using the facility under like conditions and
325 must not materially discourage use of the qualifying project.
326 The execution of the comprehensive agreement or a subsequent
327 amendment is conclusive evidence that the fees, lease payments,
328 or service payments provided for in the comprehensive agreement
329 comply with this section. Fees or lease payments established in
330 the comprehensive agreement as a source of revenue may be in
331 addition to, or in lieu of, service payments.

332 9. Duties of the private entity, including the terms and
333 conditions that the board determines serve the public purpose of
334 this section.

335 (b) The comprehensive agreement may include:

336 1. An agreement by the board to make grants or loans to the
337 private entity from amounts received from federal, state, or
338 local government, or an agency or instrumentality thereof, or
339 private donors.

340 2. A provision under which each entity agrees to provide
341 notice of default and cure rights for the benefit of the other
342 entity, including, but not limited to, a provision regarding
343 unavoidable delays.

344 3. A provision that terminates the authority and duties of
345 the private entity under this section and dedicates the
346 qualifying project to the board.

347 (8) FEES.—An agreement entered into pursuant to this
348 section may authorize the private entity to impose fees on

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349 members of the public for the use of the facility. The following
350 provisions apply to the agreement:

351 (a) The board may develop new facilities or increase
352 capacity in existing facilities through agreements with public-
353 private partnerships.

354 (b) The public-private partnership agreement must ensure
355 that the facility is properly operated, maintained, or improved
356 in accordance with standards set forth in the comprehensive
357 agreement.

358 (c) The board may lease new facilities or existing fee-for-
359 use facilities through a public-private partnership agreement.

360 (d) All revenues must be regulated by the board pursuant to
361 the comprehensive agreement.

362 (e) A negotiated portion of revenues from fee-generating
363 uses must be returned to the board over the life of the
364 agreement.

365 (9) FINANCING.—

366 (a) A private entity may enter into a private-source
367 financing agreement between financing sources and the private
368 entity. A financing agreement and any liens on the property or
369 facility must be paid in full at the applicable closing that
370 transfers ownership or operation of the facility to the board at
371 the conclusion of the term of the comprehensive agreement.

372 (b) The board may use innovative finance techniques
373 associated with a public-private partnership under this section,
374 including, but not limited to, federal loans as provided in
375 Titles 23 and 49 C.F.R., commercial bank loans, and hedges
376 against inflation from commercial banks or other private
377 sources. In addition, the board may provide its own capital or

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378 operating budget to support a qualifying project. The budget may
379 be from any legally permissible funding sources of the board,
380 including the proceeds of debt issuances. A financing agreement
381 may not subject the board's facility to liens in violation of s.
382 11.066(5).

383 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

384 (a) The private entity shall:

385 1. Develop or operate the qualifying project in a manner
386 that is acceptable to the board in accordance with the
387 provisions of the comprehensive agreement.

388 2. Maintain, or provide by contract for the maintenance or
389 improvement of, the qualifying project if required by the
390 comprehensive agreement.

391 3. Cooperate with the board in making best efforts to
392 establish interconnection between the qualifying project and any
393 other facility or infrastructure as requested by the board in
394 accordance with the comprehensive agreement.

395 4. Comply with the comprehensive agreement and a lease or
396 service contract.

397 (b) Each private facility that is constructed pursuant to
398 this section must comply with the requirements of federal,
399 state, and local laws; state, regional, and local comprehensive
400 plans; board rules, regulations, procedures, and facility
401 standards; and such other conditions that the board determines
402 to be in the public's best interest and that are included in the
403 comprehensive agreement.

404 (c) The board may provide services to the private entity.
405 An agreement for maintenance and other services entered into
406 pursuant to this section must provide for full reimbursement for

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407 services rendered for qualifying projects.

408 (d) A private entity of a qualifying project may provide
409 additional services for the qualifying project to the public or
410 to other private entities if the provision of additional
411 services does not impair the private entity's ability to meet
412 its commitments to the board pursuant to the comprehensive
413 agreement.

414 (11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
415 expiration or termination of a comprehensive agreement, the
416 board may use revenues from the qualifying project to pay
417 current operation and maintenance costs of the qualifying
418 project. If the private entity materially defaults under the
419 comprehensive agreement, the compensation that is otherwise due
420 to the private entity is payable to satisfy all financial
421 obligations to investors and lenders on the qualifying project
422 in the same way that is provided in the comprehensive agreement
423 or any other agreement involving the qualifying project, if the
424 costs of operating, maintaining, and improving the qualifying
425 project are paid in the normal course. Revenues in excess of the
426 costs for operation and maintenance costs may be paid to the
427 investors and lenders to satisfy payment obligations under their
428 respective agreements. A board may terminate with cause and
429 without prejudice a comprehensive agreement and may exercise
430 other rights or remedies that may be available to it in
431 accordance with the provisions of the comprehensive agreement.
432 The full faith and credit of the board may not be pledged to
433 secure the financing of the private entity. The assumption of
434 the development or operation of the qualifying project does not
435 obligate the board to pay an obligation of the private entity

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436 from sources other than revenues from the qualifying project
437 unless stated otherwise in the comprehensive agreement.

438 (12) SOVEREIGN IMMUNITY.—This section does not waive the
439 sovereign immunity of a board, or an officer or employee
440 thereof, with respect to participation in, or approval of, any
441 part of a qualifying project or its operation, including, but
442 not limited to, interconnection of the qualifying project with
443 any other infrastructure or project.

444 (13) CONSTRUCTION.—This section shall be liberally
445 construed to effectuate the purposes of this section, which
446 shall be construed as cumulative and supplemental to any other
447 authority or power vested in or exercised by a board. This
448 section does not affect an agreement or existing relationship
449 with a supporting organization involving a board in effect as of
450 January 1, 2014.

451 (a) Except as otherwise provided in this section, this
452 section does not amend existing laws by granting additional
453 powers to, or further restricting, a board from regulating and
454 entering into cooperative arrangements with the private sector
455 for the development, construction, or operation of a facility.

456 (b) This section does not waive any requirement in s.
457 255.103, s. 287.055, or s. 1013.45, if applicable.

458 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/14

Meeting Date

Topic

Public Private Partnerships

Bill Number

SB 900

(if applicable)

Name

Kathleen Daly

Amendment Barcode

(if applicable)

Job Title

ASST VP Gov. Relations

Address

Westcott

Phone

Street

Tallahassee

FL

E-mail

City

State

Zip

Speaking:

For

Against

Information

Representing

Florida State University

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)

3/25
Meeting Date

Topic Public Private Partnership

Bill Number 5 900
(if applicable)

Name Adam Giery (Gear-e)

Amendment Barcode _____
(if applicable)

Job Title Dir of Policy

Address 136 Sadr Brough St
Street

Phone _____

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

March 25, 2014
Meeting Date

Topic P3

Bill Number SB 900
(if applicable)

Name Helen Levine

Amendment Barcode _____
(if applicable)

Job Title Vice Chancellor, USF SP

Address 140 7th Ave S

Phone 813-230-6017

St Petersburg FL 33701
City State Zip

E-mail hlevine@usfsp.edu

Speaking: For Against Information

Representing USF St. Petersburg

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)

3/25/14

Meeting Date

Topic P3 Legislation

Bill Number SB 900 (if applicable)

Name Janet Owen

Amendment Barcode (if applicable)

Job Title VP, Government Affairs

Address 1 UNF Drive

Phone (904) 620-2586

Street

Jacksonville, FL 32224

City

State

Zip

E-mail jowen@unf.edu

Speaking: For Against Information

Representing Univ. of North 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)

3/25/14

Meeting Date

Topic P3s

Bill Number SB 900
(if applicable)

Name Adriana Pereira

Amendment Barcode _____
(if applicable)

Job Title Director of government relations

Address 11200 SW 8 ST., PC 539

Phone (305) 348-3505

Street

Miami

FL

33126

E-mail aperei@fiu.edu

City

State

Zip

Speaking: For Against Information

Representing FIU

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

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3/25/14

Meeting Date

Topic Public - Private Partnerships

Bill Number SB 900
(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
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3/25/14

Meeting Date

Topic Public Private Partnerships

Bill Number 900
(if applicable)

Name Ryan Britton

Amendment Barcode _____
(if applicable)

Job Title Dir. of State Relations

Address 777 Glades Rd.

Phone 561.297.2583

Soca Raton FL 33445
Street *City* *State* *Zip*

E-mail rbritton2@flsu.edu

Speaking: For Against Information

Representing Florida Atlantic University

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
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3/25/14

Meeting Date

Topic SB 900 - P3

Bill Number SB 900

Name Jennifer Goen

Amendment Barcode _____ (if applicable)

Job Title Director of Gov Relations FGCU

(if applicable)

Address 10501 FGCU Blvd

Phone 239-590-1020

Street

Ft. Myers, FL 33905

City

State

Zip

E-mail jgoen@fgcu.edu

Speaking: For Against Information

Representing Florida Gulf Coast University FGCU

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
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3/25/14
Meeting Date

Topic Public-Private Partnerships

Bill Number 900
(if applicable)

Name Richard Watson

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850 222 0000

Tallahassee FL 32302
City State Zip

E-mail vick@rwatsonand
associates.com

Speaking: For Against Information

Representing Associated Builders and Contractors of FL (ABC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
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3/25/14
Meeting Date

Topic PPP

Bill Number SB 900
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 W Adams St

Phone 224-7173

Tally FL 32301
City State Zip

E-mail bbevis@aifcon

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA

20th District

March 12, 2014

The Honorable Wilton Simpson
Senate Community Affairs Committee
404 S. Monroe St., 315 Knott Building
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

I respectfully request that my bill, SB 900/Public-Private Partnerships (P3), be placed on the agenda of the Senate Community Affairs Committee at the earliest possible time. The bill was favorably considered by the Senate Education Committee on March 11, 2014.

This bill authorizes and clarified the process by which state universities may utilize P3 initiatives to support its capital needs. It also creates an understanding of how to enter into a P3 and creates legal protections and safeguards for the university board.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

CC: Tom Yeatman, Staff Director; Ann Whittaker, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1532

INTRODUCER: Senator Bradley

SUBJECT: Juvenile Detention Costs

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1532 provides the Department of Juvenile Justice (department, or DJJ) with a predictable cost sharing methodology to calculate the shared county and state financial obligations for juvenile detention. The bill defines “actual cost” and “participating county,” and requires participating counties to pay a share of the actual cost of providing detention care based on the funds spent and county utilization.

II. Present Situation:

Juveniles who are arrested can be held within a secured detention facility where they await a court hearing, when specific criteria are met.¹ Within 24 hours, a judge decides whether ongoing detention is necessary. If ongoing detention is ordered, a juvenile may be held in a secure detention facility awaiting disposition of their case. Youth placed in secure detention have been assessed as a risk to public safety. The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During fiscal year 2012-2013 there were a total of 17,475 individual youth served in secure detention.²

The DJJ shares the cost of detention of juveniles in detention centers with the counties. In 2004, s. 985.686, F.S., was created,³ which established a method of cost sharing of juvenile detention between the state and counties. The statute requires non-fiscally constrained counties to pay for the cost of detention care for juveniles who reside within that county for the period of time prior to “final court disposition,” also known as the pre-disposition costs. The state is responsible for

¹ Section 985.215, F.S., provides these criteria, which include current offenses, prior history, legal status, and aggravating or mitigating factors.

² DJJ, *Bill Analysis of SB 1532* (Mar. 18, 2014).

³ Chapter 2004-263, Laws of Fla. (creating s. 985.2155, F.S.); Chapter 2006-120, s. 95, Laws of Fla. (transferring to s. 985.686, F.S.).

all costs of detention incurred in fiscally constrained counties.⁴ In fiscal year 2012-13, the final expenditures in the shared county/state juvenile detention trust fund were \$64.6 million and expenditures from the general revenue were \$20.0 million, for a total of \$84.7 million spent.⁵

The definitions of pre-disposition and post-disposition have been controversial since implementation began in 2005, and have formed the basis of several administrative challenges.⁶ In June 2013, the First District Court of Appeal affirmed an administrative law judge's order invalidating rules that the department had promulgated in 2010 relating to costs of detention.⁷ According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute and this constituted an invalid exercise of delegated legislative authority. In July 2013, the department changed their method of billing counties to reflect their analysis of the ruling by the administrative law judge.

III. Effect of Proposed Changes:

Section 1 amends s. 985.6015, F.S., to clarify that Shared County/State Juvenile Detention Trust Fund is a depository for funds to be used for the costs of juvenile detention.

Section 2 amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. The bill defines "actual cost" and "participating county." Participating counties would be required to pay a share of the actual cost of providing detention care. The DJJ is tasked with:

- Determining the actual cost by dividing the total number of detention days for juveniles residing in the county during the prior state fiscal year by the total number of detention days for all juveniles residing in such counties;
- Calculating the share of actual costs counties must pay by multiplying the county's percentage of detention care use by 50 percent of the total actual cost of detention care; and
- Informing the counties by August 1 of each year.

Under the provisions of the bill, the state pays:

- Fifty percent of the total actual cost of providing detention care in participating counties;
- The actual cost of detention care for fiscally constrained counties; and
- The actual cost of providing detention care for juveniles residing out of state.

The bill eliminates disposition as the boundary separating county and state financial obligations for juvenile detention, replacing it with a predictable cost sharing relationship based on actual costs and county utilization.

The state would still pay for the actual cost of detention care for fiscally constrained counties.

⁴ The term "fiscally constrained county" is defined to mean "a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained.

⁵ DJJ, *Bill Analysis of SB 1532* (Mar. 18, 2014).

⁶ *Hillsborough County v. Dep't of Juvenile Justice*, Case No. 07-4398; *Hillsborough County v. Dep't of Juvenile Justice*, Case No. 07-4432.

⁷ *Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

Section 3 provides an effective date of July 1, 2014.

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:

In fiscal year 2012-13, the final expenditures in the shared county/state juvenile detention trust fund were \$64.6 million and expenditures from general revenue were \$20.0 million, for a total of \$84.7 million spent.⁸ In order to set the collective revenue amount for the counties, the department multiplies this figure by 50 percent, which is \$42.3 million. This figure is the collective amount that all participating counties would be required to pay, apportioned among participating counties based upon each county's percentage of utilization.

The calculations of actual cost and share of actual cost described in the bill would change the amount of money spent by participating counties on juvenile detention care. The DJJ notes that the bill should reduce costs for participating counties, which have historically paid between 72-89 percent of the cost of detention care since 2004.⁹ Under the bill, participating counties will pay much closer to 50 percent of the cost of detention care.¹⁰

⁸ DJJ, *Bill Analysis of SB 1532* (Mar. 18, 2014).

⁹ *Id.*

¹⁰ *Id.*

To the extent that the bill's method of calculating cost sharing reduces obligations by participating county governments, the bill may increase the cost of juvenile detention for the state. The DJJ, more comprehensively, explains:

The state would receive revenues from the counties based on the expenditures from the most recently completed fiscal year. The revenues would be dependent upon the amount expended by fiscal year for detention care. In years when there are increases in the detention center budget, the following year will see increases in revenues to the state from the counties. In years where reductions occur to the detention center budget, the following year will see revenues from the counties decrease.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.6015 and 985.686.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹¹ *Id.*



192344

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 148 and 149

insert:

(12) In order to address disputed billing methodologies used between the 2008-2009 fiscal year and the 2012-2013 fiscal year, the state shall distribute to the following counties the specified annual payments on July 1 each fiscal year beginning on July 1, 2014, through July 1, 2024. This subsection expires June 30, 2025.



192344

11	(a) Alachua.....	\$234,092.
12	(b) Bay.....	\$195,061.
13	(c) Brevard.....	\$456,346.
14	(d) Broward.....	\$930,508.
15	(e) Charlotte.....	\$109,898.
16	(f) Citrus.....	\$34,099.
17	(g) Clay.....	\$209,094.
18	(h) Collier.....	\$575,538.
19	(i) Duval.....	\$511,376.
20	(j) Escambia.....	\$545,741.
21	(k) Flagler.....	\$74,079.
22	(l) Hernando.....	\$104,497.
23	(m) Hillsborough.....	\$1,119,075.
24	(n) Indian River.....	\$86,069.
25	(o) Lake.....	\$125,493.
26	(p) Lee.....	\$708,616.
27	(q) Leon.....	\$193,656.
28	(r) Manatee.....	\$395,051.
29	(s) Marion.....	\$57,708.
30	(t) Martin.....	\$71,833.
31	(u) Miami-Dade.....	\$1,171,877.
32	(v) Monroe.....	\$37,526.
33	(w) Nassau.....	\$18,657.
34	(x) Okaloosa.....	\$253,890.
35	(y) Orange.....	\$1,288,071.
36	(z) Osceola.....	\$179,912.
37	(aa) Palm Beach.....	\$762,437.
38	(bb) Pasco.....	\$368,479.
39	(cc) Pinellas.....	\$813,286.



192344

40	<u>(dd) Polk.....</u>	<u>\$408,758.</u>
41	<u>(ee) St. Johns.....</u>	<u>\$74,993.</u>
42	<u>(ff) St. Lucie.....</u>	<u>\$322,752.</u>
43	<u>(gg) Santa Rosa.....</u>	<u>\$77,640.</u>
44	<u>(hh) Sarasota.....</u>	<u>\$183,325.</u>
45	<u>(ii) Seminole.....</u>	<u>\$347,093.</u>
46	<u>(jj) Sumter.....</u>	<u>\$19,092.</u>
47	<u>(kk) Volusia.....</u>	<u>\$867,326.</u>
48	<u>(ll) Walton.....</u>	<u>\$44,476.</u>

49
50 ===== T I T L E A M E N D M E N T =====

51 And the title is amended as follows:

52 Between lines 9 and 10

53 insert:

54 requiring the state to distribute specified annual
55 payments to specified counties over a specified
56 timeframe in order to address disputed billing
57 methodologies;

By Senator Bradley

7-01273A-14

20141532__

1 A bill to be entitled
2 An act relating to juvenile detention costs; amending
3 s. 985.6015, F.S.; conforming provisions to changes
4 made by the act; amending s. 985.686, F.S.; defining
5 the term "actual cost"; revising the responsibilities
6 of specified counties and the state relating to
7 financial support for juvenile detention care;
8 requiring the Department of Juvenile Justice to
9 provide specified information to specified counties;
10 conforming provisions to changes made by the act;
11 deleting obsolete provisions; providing an effective
12 date.

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

15
16 Section 1. Subsection (2) of section 985.6015, Florida
17 Statutes, is amended to read:

18 985.6015 Shared County/State Juvenile Detention Trust
19 Fund.—

20 (2) The fund is established for use as a depository for
21 funds to be used for the costs of ~~pre~~disposition juvenile
22 detention. Moneys credited to the trust fund shall consist of
23 funds from the counties' share of the costs for ~~pre~~disposition
24 juvenile detention.

25 Section 2. Section 985.686, Florida Statutes, is amended to
26 read:

27 985.686 Shared county and state responsibility for juvenile
28 detention.—

29 (1) It is the policy of this state that the state and the

7-01273A-14

20141532__

30 counties have a joint obligation, as provided in this section,
31 to contribute to the financial support of the detention care
32 provided for juveniles.

33 (2) As used in this section, the term:

34 (a) "Actual cost" means the funds that the department
35 expends for providing detention care less any funds that it
36 receives from the Grants and Donations Trust Fund and the
37 Federal Grants Trust Fund.

38 (b)~~(a)~~ "Detention care" means secure detention and respite
39 beds for juveniles charged with a domestic violence crime.

40 (c)~~(b)~~ "Fiscally constrained county" means a county within
41 a rural area of critical economic concern as designated by the
42 Governor pursuant to s. 288.0656 or each county for which the
43 value of a mill will raise no more than \$5 million in revenue,
44 based on the certified school taxable value certified pursuant
45 to s. 1011.62(4)(a)1.a., from the previous July 1.

46 (d) "Participating county" means a county that is not a
47 fiscally constrained county and that does not provide detention
48 care for juveniles or contract with another county to provide
49 such care.

50 (3) (a) Each participating county shall pay its share of the
51 total actual cost ~~costs~~ of providing detention care as
52 determined by the department pursuant to subsection

53 ~~(5), exclusive of the costs of any preadjudicatory nonmedical~~
54 ~~educational or therapeutic services and \$2.5 million provided~~
55 ~~for additional medical and mental health care at the detention~~
56 ~~centers, for juveniles for the period of time prior to final~~
57 ~~court disposition. The department shall develop an accounts~~
58 ~~payable system to allocate costs that are payable by the~~

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20141532__

59 ~~counties.~~

60 (b) The state shall pay:

61 1. Fifty percent of the total actual cost of providing
62 detention care in participating counties as determined by the
63 department pursuant to subsection (5);

64 2. The actual cost of detention care for fiscally
65 constrained counties in the manner described in subsection (4);
66 and

67 3. The actual cost of providing detention care for
68 juveniles residing out of state.

69 ~~(4) Notwithstanding subsection (3), the state shall pay all~~
70 ~~costs of detention care for juveniles for which a fiscally~~
71 ~~constrained county would otherwise be billed.~~

72 ~~(a) By October 1, 2004, the department shall develop a~~
73 ~~methodology for determining the amount of each fiscally~~
74 ~~constrained county's costs of detention care for juveniles, for~~
75 ~~the period of time prior to final court disposition, which must~~
76 ~~be paid by the state. At a minimum, this methodology must~~
77 ~~consider the difference between the amount appropriated to the~~
78 ~~department for offsetting the costs associated with the~~
79 ~~assignment of juvenile pretrial detention expenses to the~~
80 ~~fiscally constrained county and the total estimated costs to the~~
81 ~~fiscally constrained county, for the fiscal year, of detention~~
82 ~~care for juveniles for the period of time prior to final court~~
83 ~~disposition.~~

84 ~~(b) Subject to legislative appropriation and based on the~~
85 ~~methodology developed under paragraph (a), the department shall~~
86 ~~provide funding to offset the actual cost ~~costs~~ to fiscally~~
87 ~~constrained counties of providing detention care for juveniles~~

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20141532__

88 ~~for the period of time prior to final court disposition. If~~
89 ~~county matching funds are required by the department to~~
90 ~~eliminate the difference calculated under paragraph (a) or the~~
91 ~~difference between the actual cost to ~~costs~~ of the fiscally~~
92 ~~constrained counties and the amount appropriated in small county~~
93 ~~grants for use in mitigating such costs, that match amount must~~
94 ~~be allocated proportionately among all fiscally constrained~~
95 ~~counties.~~

96 (5) Each participating county shall incorporate into its
97 annual county budget sufficient funds to pay its share of the
98 actual cost ~~costs~~ of detention care for juveniles who ~~reside~~
99 resided in that county for the prior fiscal year ~~the period of~~
100 ~~time prior to final court disposition. This amount shall be~~
101 ~~based upon the prior use of secure detention for juveniles who~~
102 ~~are residents of that county, as calculated by the department.~~
103 ~~Each county shall pay the estimated costs at the beginning of~~
104 ~~each month. Any difference between the estimated costs and~~
105 ~~actual costs shall be reconciled at the end of the state fiscal~~
106 ~~year.~~

107 (a) The department shall determine the actual cost of
108 detention care and the number of detention days used by each
109 county at the end of each fiscal year.

110 (b) By August 1 of each year, the department shall inform
111 each participating county of its percentage of detention care
112 use and the amount of its share of the actual cost of detention
113 care for the prior state fiscal year. Each such county shall pay
114 the department one-twelfth of its share of actual costs for the
115 prior state fiscal year by the first day of each month,
116 beginning on July 1 of the year following receipt of the

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20141532__

117 information.

118 (c) The department shall calculate the percentage of
119 detention care use for each participating county by dividing the
120 total number of detention days for juveniles residing in the
121 county during the prior state fiscal year by the total number of
122 detention days for all juveniles residing in such counties for
123 the prior state fiscal year.

124 (d) The department shall calculate the share of actual
125 costs for each participating county by multiplying the county's
126 percentage of detention care use by 50 percent of the total
127 actual cost of detention care for all such counties.

128 (6) Each county shall pay to the department for deposit
129 into the Shared County/State Juvenile Detention Trust Fund its
130 share of the county's total actual cost ~~costs~~ for juvenile
131 detention, based upon calculations published by the department
132 with input from the counties.

133 (7) The Department of Juvenile Justice shall determine each
134 quarter whether the counties of this state are remitting to the
135 department their share of the cost ~~costs~~ of detention as
136 required by this section.

137 (8) The Department of Revenue and the counties shall
138 provide technical assistance as necessary to the Department of
139 Juvenile Justice in order to develop the most cost-effective
140 means of collection.

141 (9) Funds received from counties pursuant to this section
142 are not subject to the service charges provided in s. 215.20.

143 (10) This section does not apply to a ~~any~~ county that
144 provides detention care for preadjudicated juveniles or that
145 contracts with another county to provide detention care for

7-01273A-14

20141532__

146 preadjudicated juveniles.

147 (11) The department may adopt rules to administer this
148 section.

149 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/14

Meeting Date

Topic

Juvenile Detention Costs

Bill Number

1532

(if applicable)

Name

Lisa Hurley

Amendment Barcode

(if applicable)

Job Title

Address

Street

City

State

Zip

100 S. Monroe St
Lakeland FL 32301

Phone

850.922.4300

E-mail

lhurley@fl-

counties.com

Speaking:

For

Against

Information

Representing

FL Assoc of Counties

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

3-25-2014
Meeting Date

Topic Juvenile Detention Costs Bill Number 1522
Name Marshe Hosack Amendment Barcode _____
(if applicable)

Job Title Intergovernmental Relations Manager
Address 1660 Ringing Blvd. Phone 941 650-6968
Street

Sarasota Fl. 34234 E-mail mhosack@scgov.net
City State Zip

Speaking: For Against Information

Representing Sarasota County 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/14

Meeting Date

Topic Juvenile Detention Costs

Bill Number 1532

Name Mark Sexton

Amendment Barcode _____ (if applicable)

Job Title Communications Director, Alachua County

Amendment Barcode _____ (if applicable)

Address 12 SE 1st Street

Phone 352-283-2317

Street

Gainesville, FL

E-mail msexton@alachuacounty.com

City

State

Zip

Speaking: For Against Information

Representing Alachua 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-14

Meeting Date

Topic DSS Split w/ Counties

Bill Number SB1532

Name Sarah Bleakley

Amendment Barcode Latvala
(if applicable)

Job Title _____

Address 1500 Mahan Dr Ste 200

Phone 850 224 4070

Street
Tallah, FL
City amendment State FL Zip 32308

E-mail Sbleakley@ngnlaw.com

Speaking: For Against Information

Representing Lee County Board of County Commissioners

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/14
Meeting Date

Topic Juvenile Detention Costs

Bill Number 1532

Name Lisa Hurley

Amendment Barcode *192344
(if applicable)

Job Title _____

Address 100 S Monroe St
Street

Phone 850.922.4300

City _____ State _____ Zip _____

E-mail lhurley@fl-
counties.com

Speaking: For Against Information

Representing FL Assoc of Counties

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

3-25-14
Meeting Date

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

Topic _____

Bill Number 1532

Name JESS MCCARTY

Amendment Barcode 192344
(if applicable)

Job Title ASSIT COUNTY AITY

BY LATVALA
(if applicable)

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street
MIAMI 33128
City State Zip

E-mail JMM2@MIAMI.DOE.GOV

Speaking: For Against Information

Representing MIAMI-DOE 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-2014

Meeting Date

Topic Juvenile Justice Costs Bill Number 1532
Name Marsha Hoar Amendment Barcode 192348
Job Title Indigovernmental Relations Manager
Address 11060 Ringling Blvd. Phone 941 650-6968
Sarasota Florida 34234 E-mail mhosack@scgov.net
City State Zip

Speaking: For Against Information

Representing Sarasota County 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.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 6, 2014

I respectfully request that **Senate Bill # 1532**, relating to Juvenile Detention Costs, be placed on the:

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

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

Senator Rob Bradley
Florida Senate, District 7

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 828

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Court System

DATE: March 14, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 828 repeals or modifies court-related statutes that are unnecessary or outdated. Statutes that are a duplication of provisions in Art. V of the State Constitution are repealed as unnecessary. Statutes that create additional requirements for judicial office are repealed because they are likely to be determined to be in conflict with the constitutional qualifications for office and therefore unconstitutional. Other statutes are amended or repealed to reflect current practices or eliminate outdated provisions.

II. Present Situation:

Article V of the State Constitution establishes and governs the Judiciary. The various sections set forth the authority, jurisdiction, and structure of the court system and provide qualifications for justices and judges. Article V also establishes the Judicial Qualifications Commission, provides for funding of the judicial branch, the admission and discipline of attorneys, and contains provisions relating to clerks of circuit courts as well as state attorneys and public defenders.

Similarly, Title V of the Florida Statutes is devoted to the Judicial Branch of state government. Title V, which consists of chapters 25-44, contains laws governing the Supreme Court, circuit courts, state attorneys and public defenders, court system funding, district courts of appeal, general provisions regarding judges and courts, and other related provisions.

Over time, many of the judicial statutes found in Title V have become unnecessary duplications of provisions contained in the State Constitution. Other statutes have become outdated.

In an effort to update the statutes relating to the Judicial Branch, the House Civil Justice Subcommittee compiled a list of duplicative statutes that are unnecessary. Those provisions comprise 13 of the 19 sections of this bill. The subcommittee also determined that additional statutes needed to be amended and that a new section should be created to deal with compensation issues. The subcommittee's recommendations are the subject of this bill.

The "Effect of Proposed Changes" provides additional information describing the present situation for each section of the bill.

III. Effect of Proposed Changes:

This bill repeals or modifies court-related statutes that are unnecessary or outdated. Below is a section by section analysis of the changes proposed in this bill.

Section 1. Section 25.151, F.S., is a law passed in 1957 that prohibits a retired Supreme Court justice from engaging in the practice of law while drawing retirement compensation. The statute is not currently enforced and similar statutes have been found unconstitutional.¹ The bill repeals the statute.

Section 2. Sections 25.191 and 25.231, F.S., require the Supreme Court to appoint a clerk who must perform duties as directed by the court. Article V, s. 3(c), State Constitution, also requires the Supreme Court to appoint a clerk to "perform such duties as the court directs." The bill repeals the statutes, which will have not have an adverse effect, because the same requirements remain in the State Constitution.

Sections 3 and 4. Sections 25.241(1) and 25.281, F.S., provide that the clerk and marshal of the Supreme Court are to be paid a salary. Similarly, Art. V, s. 3(c) of the State Constitution requires that the clerk and marshal of the Supreme Court be paid by general law. Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the clerk of the Supreme Court and section 4 repeals s. 25.281, F.S., relating to compensation of the marshal of the Supreme Court. Neither repeal will have an adverse effect, because the State Constitution requires payment of the clerk and marshal's salaries. See also s. 29.23, F.S., created by this bill in section 11.

Section 5. Section 25.351, F.S., provides that books for the Supreme Court library may be acquired by purchase or exchange with other libraries. It is unclear why this needs to be in statute. The bill repeals the statute, which is unlikely to have any practical effect.

Section 6. Section 26.01, F.S., provides that there will be 20 judicial circuits in the state. Article V, s. 1 of the State Constitution requires that the state be divided into judicial circuits that follow county lines. Section 26.021, F.S., provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging its contents into s. 26.021, F.S., for simplicity.

¹ See *In re The Florida Bar-Code of Judicial Conduct*, 281 So. 2d 21 (Fla. 1973); see also, Art. V, s. 15, FLA. CONST. (Supreme Court's exclusive jurisdiction over the practice of law).

Section 7. Section 26.021, F.S., divides the state into judicial circuits as required by the State Constitution. The statute lists the number of the judicial circuit and which counties are in each circuit. Three of the 20 judicial circuits, the Fifth, Seventh, and Sixteenth circuits, have special statutory residency requirements stating that judges must live in a particular county in the circuit. Article V, s. 8 of the State Constitution establishes the constitutional requirements for eligibility to serve as a justice or judge. The courts have ruled that no additional requirement for judicial office may be created by statute.² The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 8. Section 26.51, F.S., requires that the salaries of circuit court judges be paid “in equal monthly installments.” The language first appeared in a 1925 statute setting the salaries of a number of state officials.³ At the time, the salaries of state officials were set in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials, circuit judges, has remained in statute. The bill repeals the statutory requirement that circuit judges be paid in equal monthly installments. The repeal should have no impact on judicial salaries or when they are paid.

Section 9. Section 26.55, F.S., created the Conference of Circuit Judges of Florida. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Delete a provision declaring it to be an official function of each circuit judge to attend meetings of the conference and participate in committee activities.
- Require the Conference to operate according to the Rules of Judicial Administration adopted by the Supreme Court.
- Eliminate the requirement that the chair of the conference submit an “annual” report concerning defects in the laws of the state and any recommended amendments to the President of the Senate and the Speaker of the House. The bill authorizes the Conference to submit such a report if it deems a report “necessary regarding the administration of justice.”
- Make grammatical and technical changes.

Section 10. This section repeals s. 27.55, F.S., relating to the compensation and expenses of a public defender in a newly created judicial circuit.

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and

² See *Miller v. Mendez*, 804 So. 2d 1243, 1246 (Fla. 2001). A statute cannot require residency within a circuit at the time of qualifying when the constitution only requires residency at the time of taking office; *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008), rev. denied, 994 So. 2d 304. (“Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid.”),

³ Chapter 11335, L.O.F., s. 1 (1925).

expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

Section 11. This section creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

The State Constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382(3), F.S., current law regarding court system budgeting. The newly created statute reflects long-standing policies.

Section 12. This section repeals ss. 35.12, 35.13, 35.19, and 35.21, F.S., relating to district courts of appeal.

Article V, s. 2(c), State Constitution, provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statute, which will have no practical effect.

Article V, s. 4(a), State Constitution, requires that three judges hear a case before a district court of appeal, and that the “concurrence of two” is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statute, which will have no adverse effect, because the same provision remains in the State Constitution.

Article V, s. 14(a), State Constitution, provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statute provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Article V, s. 4(c), State Constitution, requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statute, which will have no adverse effect, as the same provision remains in the State Constitution.

Section 13. This section amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal. Article V, s. 4(c) of the State Constitution provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Section 14. Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal “shall be as prescribed by the rules of the court.” No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), State Constitution, requires the clerk to “perform such duties as the court directs.” Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk or any other employee who serves at the pleasure of an appointing body. The bill repeals the statute, which is anticipated to have no effect on appellate court clerks or their operation.

Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. Article V, s. 4(c), State Constitution, provides that the salary of a marshal of a district court of appeal is to be set by general law. The bill repeals the statute, which will have no detrimental effect, because the compensation of the marshal will be provided by the new s. 29.23, F.S., to be created by section 11 of this bill.

Section 15. This section repeals s. 38.13, F.S., relating to the appointment of a judge ad litem in a circuit or county court.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by Art. V, s. 2(b), of the State Constitution, which allows the Chief Justice to appoint a judge to another court, Fla. R. Jud. Admin. 2.215(b)(4), and the concept of arbitration found in s. 44.104, F.S. The bill repeals the statute allowing the appointment of a judge ad litem.

Section 16. Section 43.20, F.S., relating to the Judicial Qualifications Commission, is amended. The Judicial Qualifications Commission is created by Art. V, s. 12, of the State Constitution. The commission is authorized to investigate and recommend to the Supreme Court the removal of a justice or judge whose conduct demonstrates unfitness to hold office and to recommend appropriate disciplinary action. Section 43.20, F.S., implements the Judicial Qualifications Commission by statute. A 1996 constitutional amendment increased the membership of the commission to 15 from 13 members. This bill amends s. 43.20, F.S., to conform to the change to 15 from 13 members.

Section 17. This section repeals s. 57.101, F.S., relating to costs in the Supreme Court. Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court which the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

Section 18. Section 92.15, F.S., relating to federal land office receipts, is repealed.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from

the United States to the person named in the receipt as having paid for the land. Federal law in the 1800s recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so “the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor].”⁴ The last appellate case under the statute was decided in 1914,⁵ and the records of the Florida land grant office show that it closed in 1933.⁶ All land grant properties should have had numerous recorded title transactions since then and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S., (the Marketable Record Title Act). The bill repeals the statute.

Section 19. This section provides an effective date of July 1, 2014.

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 Office of the State Courts Administrator does not expect the bill to have a fiscal impact on the state courts system.⁷

⁴ *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also, generally, *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).

⁵ *Boley v. Wynn*, 67 So. 117 (Fla. 1914).

⁶ National Archives, *Records of the Bureau of Land Management [BLM], 49.9.7 Florida Land Offices*, available at, <http://www.archives.gov/research/guide-fed-records/groups/049.html>, (last visited March 14, 2014).

⁷ Office of the State Courts Administrator, *Judicial Impact Statement for SB 828*, (March 1, 2014) (on file with the Senate Committee on Community Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.241(1), 26.021, 26.55, 35.22, and 43.20.

This bill creates section 29.23 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 25.151, 25.191, 25.231, 25.281, 25.351, 26.01, 26.51, 27.55, 35.12, 35.13, 35.19, 35.21, 35.25, 35.27, 38.13, 57.101, and 92.15.

IX. Additional Information:

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

CS by Judiciary on March 11, 2014:

The committee substitute removes the repeal of s. 27.50, F.S., relating to the qualifications and election of a public defender.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Bradley

590-02446-14

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1 A bill to be entitled
2 An act relating to the court system; repealing s.
3 25.151, F.S., relating to a prohibition on the
4 practice of law by a retired justice of the Supreme
5 Court; repealing ss. 25.191 and 25.231, F.S., relating
6 to the appointment and duties of a Clerk of the
7 Supreme Court; amending s. 25.241, F.S.; deleting a
8 requirement regarding the salary of the Clerk of the
9 Supreme Court, to conform; repealing s. 25.281, F.S.,
10 relating to compensation of the Marshal of the Supreme
11 Court; repealing s. 25.351, F.S., relating to the
12 acquisition of books by the Supreme Court; repealing
13 s. 26.01, F.S., relating to the number of judicial
14 circuits; amending s. 26.021, F.S.; specifying the
15 number of judicial circuits; repealing certain
16 residency requirements for circuit judges; repealing
17 s. 26.51, F.S., relating to payment of the salaries of
18 circuit judges; amending s. 26.55, F.S.; excluding
19 retired judges practicing law from the Conference of
20 Circuit Judges of Florida; removing a requirement that
21 circuit court judges attend and participate in such
22 conference; requiring that the conference operate
23 according to the Rules of Judicial Administration;
24 revising requirements for such conferences; repealing
25 s. 27.55, F.S., relating to compensation and certain
26 expenditures of public defenders; creating s. 29.23,
27 F.S.; providing for certain judicial branch salaries;
28 repealing ss. 35.12, 35.13, 35.19, and 35.21, F.S.,
29 relating to the chief judge, quorum, compensation of

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30 judges, and clerk, respectively, of the district
31 courts of appeal; amending s. 35.22, F.S.; deleting a
32 requirement for the appointment and salary of a clerk
33 for each district court of appeal; repealing ss. 35.25
34 and 35.27, F.S., relating to duties of the clerk and
35 compensation of the marshal, respectively, of the
36 district courts of appeal; repealing s. 38.13, F.S.,
37 relating to replacement of disqualified judges of the
38 district courts of appeal; amending s. 43.20, F.S.;
39 revising the number of members of the Judicial
40 Qualifications Commission to conform to requirements
41 of the State Constitution; repealing s. 57.101, F.S.,
42 relating to the charging of costs against the losing
43 party for certain copies of records in the Supreme
44 Court; repealing s. 92.15, F.S., relating to an
45 evidentiary rule regarding evidence of title to land
46 passing from the United States; providing an effective
47 date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Section 25.151, Florida Statutes, is repealed.

52 Section 2. Sections 25.191 and 25.231, Florida Statutes,
53 are repealed.

54 Section 3. Subsection (1) of section 25.241, Florida
55 Statutes, is amended to read:

56 25.241 Clerk of Supreme Court; compensation; assistants;
57 filing fees, etc.—

58 ~~(1) The Clerk of the Supreme Court shall be paid an annual~~

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59 ~~salary to be determined in accordance with s. 25.382.~~

60 Section 4. Section 25.281, Florida Statutes, is repealed.

61 Section 5. Section 25.351, Florida Statutes, is repealed.

62 Section 6. Section 26.01, Florida Statutes, is repealed.

63 Section 7. Section 26.021, Florida Statutes, is amended to
64 read:

65 26.021 Judicial circuits; judges. The state is divided into
66 20 judicial circuits:

67 (1) The first circuit is composed of Escambia, Okaloosa,
68 Santa Rosa, and Walton Counties.

69 (2) The second circuit is composed of Franklin ~~Leon,~~
70 Gadsden, Jefferson, Leon, Liberty, and Wakulla, ~~Liberty, and~~
71 ~~Franklin~~ Counties.

72 (3) The third circuit is composed of Columbia, Dixie,
73 Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

74 (4) The fourth circuit is composed of Clay, Duval, and
75 Nassau Counties.

76 (5) The fifth circuit is composed of Citrus, Hernando,
77 Lake, Marion, and Sumter Counties. ~~Two of the circuit judges~~
78 ~~authorized for the fifth circuit shall reside in either Citrus,~~
79 ~~Hernando, or Sumter County, and neither of such two judges shall~~
80 ~~reside in the same county.~~

81 (6) The sixth circuit is composed of Pasco and Pinellas
82 Counties.

83 (7) The seventh circuit is composed of Flagler, Putnam, St.
84 Johns, and Volusia Counties. ~~One judge shall reside in Flagler~~
85 ~~County; two judges shall reside in Putnam County; two judges~~
86 ~~shall reside in St. Johns County; and three judges shall reside~~
87 ~~in Volusia County. There shall be no residency requirement for~~

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88 ~~any other judges in the circuit.~~

89 (8) The eighth circuit is composed of Alachua, Baker,
90 Bradford, Gilchrist, Levy, and Union Counties.

91 (9) The ninth circuit is composed of Orange and Osceola
92 Counties.

93 (10) The tenth circuit is composed of Hardee, Highlands,
94 and Polk Counties.

95 (11) The eleventh circuit is composed of Miami-Dade County.

96 (12) The twelfth circuit is composed of Desoto, Manatee,
97 and Sarasota, ~~and DeSoto~~ Counties.

98 (13) The thirteenth circuit is composed of Hillsborough
99 County.

100 (14) The fourteenth circuit is composed of Bay, Calhoun,
101 Gulf, Holmes, Jackson, and Washington Counties.

102 (15) The fifteenth circuit is composed of Palm Beach
103 County.

104 (16) The sixteenth circuit is composed of Monroe County.
105 ~~One judge in the circuit shall reside in the middle or upper~~
106 ~~Keys. There shall be no residency requirement for any other~~
107 ~~judge in the circuit.~~

108 (17) The seventeenth circuit is composed of Broward County.

109 (18) The eighteenth circuit is composed of Brevard and
110 Seminole Counties.

111 (19) The nineteenth circuit is composed of Indian River,
112 Martin, Okeechobee, and St. Lucie Counties.

113 (20) The twentieth circuit is composed of Charlotte,
114 Collier, Glades, Hendry, and Lee Counties.

115 (21) Notwithstanding subsections (1)-(20), the territorial
116 jurisdiction of a circuit court may be expanded as provided for

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117 in s. 910.03(3).

118

119 The judicial nominating commission of each circuit, in
120 submitting nominations for any vacancy in a judgeship, and the
121 Governor, in filling any vacancy for a judgeship, shall consider
122 whether the existing judges within the circuit, together with
123 potential nominees or appointees, reflect the geographic
124 distribution of the population within the circuit, the
125 geographic distribution of the caseload within the circuit, the
126 racial and ethnic diversity of the population within the
127 circuit, and the geographic distribution of the racial and
128 ethnic minority population within the circuit.

129 Section 8. Section 26.51, Florida Statutes, is repealed.

130 Section 9. Section 26.55, Florida Statutes, is amended to
131 read:

132 26.55 Conference of Circuit Judges of Florida; duties and
133 reports.—

134 (1) There is created and established the Conference of
135 Circuit Judges of Florida. The conference consists ~~shall consist~~
136 of the active and retired circuit judges of the several judicial
137 circuits of the state, excluding retired judges practicing law.

138 (2) The conference shall annually elect a chair. The chair,
139 ~~whose duty it shall be to~~ call all meetings and ~~to~~ appoint
140 committees to effectuate the purposes of the conference. ~~It is~~
141 ~~declared to be an official function of each circuit judge to~~
142 ~~attend the meetings of the conference. It is also an official~~
143 ~~function of each circuit judge to participate in the activity of~~
144 ~~each committee to the membership of which such judge is~~
145 ~~appointed.~~

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146 ~~(3)(a) It is declared to be the responsibility of The~~
 147 conference shall operate according to the Rules of Judicial
 148 Administration adopted by the Supreme Court. The
 149 responsibilities of the conference include to:

150 ~~(a)1. Considering and making Consider and make~~
 151 recommendations concerning the betterment of the judicial system
 152 of the state and its various parts;

153 ~~(b)2. Considering and making Consider and make~~
 154 recommendations concerning the improvement of rules and methods
 155 of procedure and practice in the several courts; ~~and~~

156 ~~(c)3. Reporting Report~~ to the Supreme Court its such
 157 findings and recommendations under this subsection; and as the
 158 ~~conference may have with reference thereto.~~

159 ~~(d)(b) Providing Not less than 60 days before the convening~~
 160 ~~of the regular session of the Legislature with, the chair of the~~
 161 ~~conference shall report to the President of the Senate and the~~
 162 ~~Speaker of the House~~ such recommendations as the conference may
 163 have concerning defects in the laws of this state and such
 164 amendments or additional legislation as the conference may deem
 165 necessary regarding the administration of justice.

166 Section 10. Section 27.55, Florida Statutes, is repealed.

167 Section 11. Section 29.23, Florida Statutes, is created to
 168 read:

169 29.23 Salaries of certain positions in the judicial
 170 branch.—

171 (1) The salaries of justices, judges of the district courts
 172 of appeal, circuit judges, and county judges shall be fixed
 173 annually in the General Appropriations Act.

174 (2) The clerk and the marshal of the Supreme Court, or a

590-02446-14

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175 clerk or marshal of a district court of appeal, shall be paid an
176 annual salary to be determined in accordance with s. 25.382(3).

177 Section 12. Sections 35.12, 35.13, 35.19, and 35.21,
178 Florida Statutes, are repealed.

179 Section 13. Subsection (1) of section 35.22, Florida
180 Statutes, is amended to read:

181 35.22 Clerk of district court; ~~appointment;~~ compensation;
182 assistants; filing fees; teleconferencing.-

183 ~~(1) Each district court of appeal shall appoint a clerk who~~
184 ~~shall be paid an annual salary to be determined in accordance~~
185 ~~with s. 25.382.~~

186 (1)~~(2)~~ The clerk may ~~is authorized to~~ employ such deputies
187 and clerical assistants as may be necessary. Their number and
188 compensation shall be approved by the court, and paid from the
189 annual appropriation for the district courts of appeal.

190 (2)~~(3)~~(a) The clerk, upon the filing of a certified copy of
191 a notice of appeal or petition, shall charge and collect a
192 filing fee of \$300 for each case docketed, and service charges
193 as provided in s. 28.24 for copying, certifying or furnishing
194 opinions, records, papers or other instruments and for other
195 services. The state ~~of Florida~~ or its agencies, when appearing
196 as appellant or petitioner, is exempt from the filing fee
197 required in this subsection. ~~From each attorney appearance pro~~
198 ~~hac vice,~~ The clerk shall collect from each attorney appearance
199 pro hac vice a fee of \$100 for deposit as provided in this
200 section.

201 (b) Upon the filing of a notice of cross-appeal, or a
202 notice of joinder or motion to intervene as an appellant, cross-
203 appellant, or petitioner, the clerk shall charge and collect a

590-02446-14

2014828c1

204 filing fee of \$295. The clerk shall remit the fee to the
205 Department of Revenue for deposit into the General Revenue Fund.
206 The state and its agencies are exempt from the filing fee
207 required by this paragraph.

208 (3)~~(4)~~ The opinions of the district court of appeal may
209 ~~shall~~ not be recorded, but the original as filed shall be
210 preserved with the record in each case.

211 (4)~~(5)~~ The clerk may ~~is authorized~~ immediately, after a
212 case is disposed of, ~~to~~ supply the judge who tried the case and
213 from whose order, judgment, or decree, appeal or other review is
214 taken, a copy of all opinions, orders, or judgments filed in
215 such case. Copies of opinions, orders, and decrees shall be
216 furnished in all cases to each attorney of record and for
217 publication in Florida reports to the authorized publisher
218 without charge, and copies furnished to other law book
219 publishers at one-half the regular statutory fee.

220 (5)~~(6)~~ The clerk of each district court of appeal shall ~~is~~
221 ~~required to~~ deposit all fees collected in the State Treasury to
222 the credit of the General Revenue Fund, except that \$50 of each
223 \$300 filing fee collected shall be deposited into the State
224 Courts Revenue Trust Fund to fund court operations as authorized
225 in the General Appropriations Act. The clerk shall retain an
226 accounting of each such remittance.

227 (6)~~(7)~~ The clerk of the district court of appeal may ~~is~~
228 ~~authorized to~~ collect a fee from the parties to an appeal
229 reflecting the actual cost of conducting the proceeding through
230 teleconferencing if ~~where~~ the parties have requested that an
231 oral argument or mediation be conducted through
232 teleconferencing. The fee collected for this purpose shall be

590-02446-14

2014828c1

233 used to offset the expenses associated with scheduling the
234 teleconference and shall be deposited in the State Courts
235 Revenue Trust Fund.

236 Section 14. Sections 35.25 and 35.27, Florida Statutes, are
237 repealed.

238 Section 15. Section 38.13, Florida Statutes, is repealed.

239 Section 16. Subsection (2) of section 43.20, Florida
240 Statutes, is amended to read:

241 43.20 Judicial Qualifications Commission.—

242 (2) MEMBERSHIP; TERMS.—The commission shall consist of 15
243 ~~13~~ members. The members of the commission shall serve for terms
244 of 6 years.

245 Section 17. Section 57.101, Florida Statutes, is repealed.

246 Section 18. Section 92.15, Florida Statutes, is repealed.

247 Section 19. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.25.14
Meeting Date

Topic Support the bill - Court System

Bill Number 828
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 So. Monroe St #815

Phone 850 999-4180

Tallahassee FL 32301
City State Zip

E-mail medenfield@deanreed.com

Speaking: For Against Information *(waive in support)*

Representing The Conference of Circuit Judges

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No
(General Counsel)

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)

Meeting Date _____

Topic Court System Bill Number SB 878
(if applicable)

Name John Stargel Amendment Barcode _____
(if applicable)

Job Title Legislative Chair, Conference of Circuit Judges

Address _____ Phone _____
Street

City _____ State _____ Zip _____
City State Zip

Speaking: For Against Information

Representing Waive in Support

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)

Meeting Date _____

Topic CS/SS 828 (Court System)

Bill Number _____
(if applicable)

Name Lisa Goodner

Amendment Barcode _____
(if applicable)

Job Title State Cts Administrator

Address 500 S Duval St

Phone 850-922-5081

Street

Tallahassee FL 32399

City

State

Zip

E-mail goodnerl@flcourts.org

Speaking: For Against Information

Representing State Courts System

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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 17, 2014

I respectfully request that **Senate Bill # 828**, relating to Court System, be placed on the:

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

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

Senator Rob Bradley
Florida Senate, District 7

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1450

INTRODUCER: Regulated Industries Committee and Senator Simpson

SUBJECT: Homeowners' Association Meetings

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1450 requires that meetings of the board of directors of a homeowners' association and meetings of the association's membership must be held at locations that are accessible to physically handicapped persons.

II. Present Situation:

Homeowners' Associations

Florida law recognizes corporations that operate homeowners' associations, provides procedures for doing so, and protects the rights of association members.¹

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.²

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

Homeowners' associations are also governed by either ch. 607, F.S., (relating to for-profit corporations) or by ch. 617, F.S., (relating to not-for-profit corporations).³

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean, "a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members."

Section 720.301(8), F.S., defines the term "member" to mean "a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof."

Section 720.301(10), F.S., defines the term "parcel owner" to mean the record owner of legal title to a parcel.

Section 720.301(11), F.S., defines the term "voting interest" to mean "the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents."

Homeowners' associations are administered by a board of directors whose members are elected.⁴ 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. The governing documents include recorded declarations of covenants, bylaws, articles of incorporation, and any duly adopted amendments to these documents.⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶

Americans with Disabilities Protections

The Americans with Disabilities Act of 1990 (ADA or "act")⁷ protects Americans with disabilities from discrimination related to employment, the provision of public services, and the provision of access to and enjoyment of public accommodations. With regard to public accommodations, the act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

The act defines a disability to mean:

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.⁸

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

⁷ Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*

⁸ 42 U.S.C. 12102(1).

In relevant part, the act provides:⁹

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce:

- (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (B) a restaurant, bar, or other establishment serving food or drink;
- (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;
- (D) an auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, library, gallery, or other place of public display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Florida has adopted the architectural accessibility requirements of the ADA into the Florida Building Code.¹⁰

State Regulation of Homeowners' Associations

Unlike condominium and cooperative associations,¹¹ which are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (department), homeowners' associations are not regulated by a state agency.

⁹ 42 U.S.C. 12181(7).

¹⁰ Section 553.503, F.S.

¹¹ See chs. 718 and 719, F.S., respectively.

Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The number of homeowners' associations or persons living in communities governed by homeowners' associations in Florida is unknown. Although homeowners' associations are required to file articles of incorporation with the Division of Corporations (division) in the Department of State, the division cannot identify corporations that are homeowners' associations under ch. 720, F.S.¹²

Meetings of the Board

Section 720.303(2)(a), F.S., provides for the conduct of meetings of the board. It requires a quorum for a meeting of the board. All meetings of the board must be open to all members. However, meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege are not required to be open to non-board members. The quorum and open meeting requirements apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds. These requirements also apply to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

Meetings of Members

Section 720.306, F.S., provides for meetings of the members of the homeowners' association. Section 720.306(1)(a), F.S., requires a quorum of 30 percent of the total voting interests, unless a lower number is provided in the bylaws. Section 720.306(2), F.S., requires that an association must hold an annual meeting of its members for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual

¹² Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004, page 5. A copy of the report is available on the internet at <http://www.ccfj.net/DBPRTFfinalreport.pdf> (Last visited March 11, 2014).

meeting or as provided in the governing documents. Membership meetings are held to elect leaders, adopt and approve association financial statements, amend the governing documents, handle items of special business involving the membership, and to address other matters for the general welfare of the community.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 720.303, F.S., to require the meetings of the board of directors of a homeowners' association to be held at locations that are accessible to physically handicapped persons.

Section 2 amends s. 720.306, F.S., to require the meetings of the members of an association to be held at locations that are accessible to physically handicapped persons.

The bill does not define the term “physically handicapped.”

Section 3 provides an effective date of July 1, 2014.

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.

¹³ See Peter M. Dunbar and Charles F. Dudley, *The Law of Florida Homeowners Associations*, 9th ed. (2012-2013) s. 2.1.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 720.303 and 720.306.

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

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

CS by Regulated Industries Committee on March 13, 2014:

- Changes the title of the bill from an act relating to “Homeowners’ Association Board Meetings” to an act relating to “Homeowners’ Association Meetings.”
- Amends s. 720.306(1)(a), F.S., to require that meetings of the membership of the association must be held at locations that are accessible to physically handicapped persons.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Simpson

580-02550-14

20141450c1

1 A bill to be entitled
2 An act relating to homeowners' association meetings;
3 amending ss. 720.303 and 720.306, F.S.; requiring
4 meetings to be held at locations accessible to
5 physically handicapped persons; providing an effective
6 date.

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

9
10 Section 1. Paragraph (a) of subsection (2) of section
11 720.303, Florida Statutes, is amended to read:

12 720.303 Association powers and duties; meetings of board;
13 official records; budgets; financial reporting; association
14 funds; recalls.—

15 (2) BOARD MEETINGS.—

16 (a) A meeting of the board of directors of an association
17 occurs whenever a quorum of the board gathers to conduct
18 association business. ~~All~~ Meetings of the board must be open to
19 all members, except for meetings between the board and its
20 attorney with respect to proposed or pending litigation where
21 the contents of the discussion would otherwise be governed by
22 the attorney-client privilege, and must be held at locations
23 that are accessible to physically handicapped persons. The
24 provisions of this subsection shall also apply to the meetings
25 of any committee or other similar body when a final decision
26 will be made regarding the expenditure of association funds and
27 to meetings of any body vested with the power to approve or
28 disapprove architectural decisions with respect to a specific
29 parcel of residential property owned by a member of the

580-02550-14

20141450c1

30 community.

31 Section 2. Paragraph (a) of subsection (1) of section
32 720.306, Florida Statutes, is amended to read:

33 720.306 Meetings of members; voting and election
34 procedures; amendments.—

35 (1) QUORUM; AMENDMENTS.—

36 (a) Unless a lower number is provided in the bylaws, the
37 percentage of voting interests required to constitute a quorum
38 at a meeting of the members shall be 30 percent of the total
39 voting interests. Unless otherwise provided in this chapter or
40 in the articles of incorporation or bylaws, decisions that
41 require a vote of the members must be made by the concurrence of
42 at least a majority of the voting interests present, in person
43 or by proxy, at a meeting at which a quorum has been attained.
44 The meeting must be held at a location that is accessible to
45 physically handicapped persons.

46 Section 3. This act shall take effect July 1, 2014.

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Jesse Panuccio
Executive Director, Department of Economic Opportunity

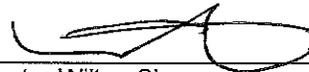
NOTICE OF HEARING

TO: Mr. Jesse Panuccio

YOU ARE HEREBY NOTIFIED that the Committee on Community Affairs of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 25, 2014, in 301 Senate Office Building, commencing at 2:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 20th day of March, 2014

Committee on Community Affairs



Senator Wilton Simpson
As Chair and by authority of the committee

cc: Members, Committee on Community Affairs
Office of the Sergeant at Arms

584

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Jesse Panuccio

is duly appointed Executive Director,

Executive Director,

Department of Economic Opportunity

for a term beginning on the

Sixteenth day of May, A.D., 2013,

to serve at the pleasure of the Governor

and is subject to be confirmed by the Senate

during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eleventh day of July, A.D., 2013.*



Ken Detzner

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear

State of Florida appears in small letters across the face of this 8 1/2 x 11" document

OATH OF OFFICE
(Art. II, § 5(b), Fla. Const.)

RECEIVED
CLERK OF STATE
2013 JUL 10 AM 10:19
DIVISION OF COLLECTIONS
TALLHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Executive Director, Department of Economic Opportunity

(Title of Office)

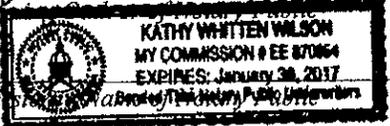
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature [Handwritten Signature]

Sworn to and subscribed before me this 9th day of July, 2013

Signature of Officer Administering Oath Kathy Whitten Wilson



Print, Type, or Stamp Commission of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

2050 Gardenbrook Lane

Street or Post Office Box

Tallahassee, Florida 32301

City, State, Zip Code

Jesse Panuccio

Print name as you desire commission issued

Signature [Handwritten Signature]



RICK SCOTT
GOVERNOR

RECEIVED
DEPT. OF STATE
2013 MAY 30 PM 3:31

DEPT. OF REVENUE
TALLAHASSEE, FL

May 30, 2013

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have amended the following reappointment under the provisions of Section 1001.71, Florida Statutes:

Mr. Jesse M. Panuccio
2050 Gardenbrook Lane
Tallahassee, Florida 32301

as Executive Director of the Department of Economic Opportunity, subject to confirmation by the Senate. This appointment is effective May 16, 2013, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/vh

104733

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

7-9-13

Date Completed

1. Name: Mr. Panuccio Jesse M.
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 107 East Madison Street Suite 212 Tallahassee
Street Office # City
FL 32399 (850) 245-7298
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 2050 Gardenbrook Lane Tallahassee Leon
Street City County
FL 32301 (850) 692-3179
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business Residence Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
2050 Gardenbrook Lane	Tallahassee, FL	Feb. 2011	Present
1200 N. Veitch St.	Arlington, VA	Oct. 2007	Jan. 2011

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
1200 N. Veitch St.	Arlington, VA	Oct. 2007	Jan. 2011
480 N. Wall Street	Salt Lake City, UT	Aug. 2006	Aug. 2007
44 Martin Street	Cambridge, MA	Aug. 2004	May 2006*
Harvard Law School	Cambridge, MA	Aug. 2003	May 2004*
(See attached)			

5. Date of Birth: Nov. 1, 1980 Place of Birth: New Jersey

6. Social Security Number: _____

7. Driver License Number: _____ ing State: Florida

8. Have you ever used or been known by any other legal name? Yes No If "Yes" Explain

RECEIVED
 DEPARTMENT OF STATE
 DIVISION OF ELECTIONS
 TALLAHASSEE, FL
 2013 JUL 10 AM 10:19

Questionnaire for Senate Confirmation (attachment)

Continuation of Question #4.(B)

Duke University	Durham, NC	Jan. 2003 – May 2003*
Hotel At. George Student Housing	NYC, NY	Jan. 2002 – June 2002
GW University	Washington, DC	Summer 2002

*During summers between school years (college & law), I lived in various locations, but cannot recall each of these temporary addresses. The locations were in Pompano Beach, FL; Montgomery, AL; and Washington, D.C.

9. Are you a United States citizen? Yes No If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 2011

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Leon B. Current Party Affiliation: Republican

12. Education

A. High School: Morris Hills High School, Rockaway, NJ Year Graduated: 1999
(Name and Location)

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Duke University</u>	<u>1999-2003</u>	<u>BA</u>
<u>Harvard Law School</u>	<u>2003-2006</u>	<u>JD</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes No If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes No If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
<u>I received a speeding ticket in Virginia on 4/2/00, but my records do not reflect the amount of the fine, so I cannot definitively answer "yes" or "no" to this question as worded. Other than the speeding ticket, the answer is "no."</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>DEO, Tallahassee, FL</u>	<u>Government</u>	<u>Executive Director</u>	<u>Jan. 2013 - present</u>
<u>EOG, Tallahassee, FL</u>	<u>Government</u>	<u>General Counsel</u>	<u>Mar. 2012 - Jan. 2013</u>
<u>EOG, Tallahassee, FL</u>	<u>Government</u>	<u>Deputy General Counsel</u>	<u>Feb. 2011 - Mar. 2012</u>
<u>Cooper & Kirk, PLLC</u>	<u>Law Firm</u>	<u>Associate</u>	<u>2007 - 2011</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes No
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>See answer to #15.</u>		

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

For two years in the EOG legal office, I gained a deep understanding of how state agencies function. Working closely with the Governor also allowed me to understand and appreciate his vision for a government that is transparent, accountable, and efficient. In addition, because DEO is chiefly a compliance and monitoring agency, my background as an attorney will serve me well in this position. Moreover, with several months on the job at DEO, I believe I have learned a great deal about its critical functions, its challenges, and its potential for helping our economy thrive.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes No If "Yes", list:

My BA is in Public Policy. I also have a JD.

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes No If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes No If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
General Counsel, EOG	Mar. 2012	N/A	State
Deputy General Counsel, EOG	Feb. 2011	N/A	State

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>
_____	_____	_____
_____	_____	_____

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes No If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>
_____	_____	_____
_____	_____	_____

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes No If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes No If "Yes", list:

A. Title of Office: Executive Director

B. Term of Appointment: Pleasure of Governor

C. Confirmation results: Unanimous approval by three committees of relevance; No action by full Senate Chamber.

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes No If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
Law license	10/20/2006	Florida Supreme Court	N/A
_____	_____	_____	_____
_____	_____	_____	_____

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes No

A. Did you receive any compensation other than reimbursement for expenses? Yes No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
I submitted a "lobbyist" registration to the extent that it is required of the Executive Director of DEO.	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
David Thompson			
Charlie Trippe			
Michael Sevi			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held & Term</u>	<u>Date(s) of Membership</u>
Florida Bar	651 E. Jefferson St., Tallahassee, FL 32301	Member	10/06 - present*
Federalist Society	1015 18th St., NW, DC 20036	Member	2003 - present
Republican Nat'l Lawyers Assn	POB 18965, DC 20036	Member	2004 & intermittant
Life University Bd. of Trustees	1269 Barclay Cir, Marietta, GA 30060	Member	2009 - present

* Membership in the Florida Bar is required by law in order to practice in the state of Florida.

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes No If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

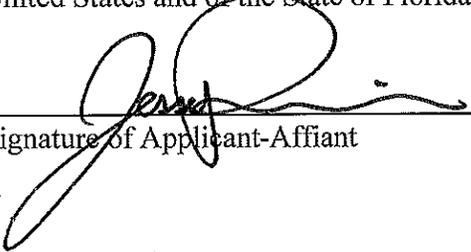
The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

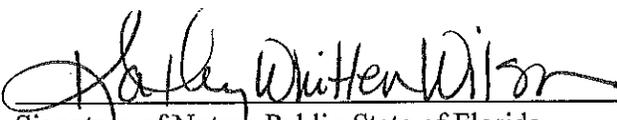
RECEIVED
DEPARTMENT OF STATE
2013 JUL 10 AM 10:19
DIVISION OF ELECTIONS
TALLAHASSEE, FL

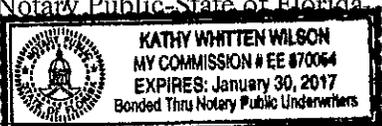
STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared Jesse M. Panuccio, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.


Signature of Applicant-Affiant

Sworn to and subscribed before me this 9th day of July, 2013.


Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 1-30-17

Personally Known OR Produced Identification

Type of Identification Produced _____

(seal)

CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 3/25/2014 2:03:07 PM

Ends: 3/25/2014 3:09:36 PM

Length: 01:06:30

2:03:11 PM Call to order
2:04:08 PM Tab 2 SJR 1256 Senator Garcia
2:05:22 PM Speaker Jess McCarty representing Miami-Dade County
2:06:20 PM Senator Smith
2:07:31 PM Senator Thompson
2:08:52 PM Roll call on SJR 1256
2:09:10 PM Bill passes
2:09:17 PM Tab 13 Jesse Pannucio Senate Confirmation
2:15:41 PM Senator Smith
2:21:14 PM Senator Soto
2:22:53 PM Senator Thompson
2:28:44 PM Roll call on confirmation of Jesse Pannucio
2:29:06 PM Appointment reported favorably
2:29:17 PM Tab 3 SB 640 Senator Braynon's legislative aide Katia Fleur
2:30:04 PM Roll call on SB 640
2:30:18 PM Bill passes
2:30:27 PM Tab 4 SB 956 Senator Bean's legislative aide James Kotas
2:31:42 PM Amendment 1 barcode 208994
2:32:21 PM Amendment 2 barcode 476578
2:32:51 PM Senator Smith
2:34:08 PM Senator Soto
2:34:50 PM Roll call on SB 956
2:35:14 PM Tab 6 SB 974 Senator Abruzzo's legislative aide Shreya Kuntawala
2:37:21 PM Senator Hukill
2:39:28 PM Amendment 1 barcode 164774
2:41:53 PM Senator Smith
2:42:52 PM Senator Soto
2:43:51 PM Tab 6 SB 956 temporarily passed
2:43:57 PM Tab 1 SB 1678 Senator Ring's legislative aide J.J. Piskadlo
2:45:22 PM Roll call on SB 1678
2:45:37 PM Bill passes
2:45:46 PM Tab 7 SB 470 Senator Detert's legislative aide Charlie Anderson
2:46:16 PM Amendment 1 barcode 404640
2:46:46 PM Senator Soto
2:48:12 PM Roll call on SB 470
2:48:27 PM Bill passes
2:48:39 PM Tab 8 SB 1240 Senator Margolis's legislative aide Terry
2:49:49 PM Senator Bradley
2:51:43 PM Senator Simpson
2:52:48 PM Roll call on SB 1240
2:53:11 PM Bill passes
2:53:31 PM Tab 9 SB 900 Senator Latvala
2:54:18 PM Amendment 1 barcode 490536
2:56:13 PM Amendment to the amendment barcode 281460
2:56:33 PM Amendment to the amendment barcode 692316
2:59:15 PM Roll call on SB 900
2:59:29 PM Bill passes
2:59:40 PM Tab 11 SB 828 Senator Bradley
3:00:20 PM Senator Latvala
3:01:02 PM Senator Bradley
3:02:10 PM Roll call on SB 828
3:02:24 PM Bill passes

3:02:36 PM Tab 10 SB 1532 Senator Bradley
3:02:44 PM Tab 10 SB 1532 temporarily passed
3:03:00 PM Tab 12 SB 1450 Senator Simpson
3:03:58 PM Senator Smith
3:04:34 PM Senator Simpson
3:05:20 PM Roll call on SB 1450
3:05:37 PM Bill passes
3:05:51 PM Tab 5 SB 1172 Senator Sobel's legislative Timothy Mason
3:07:13 PM Speaker Carole Duncanson representing City of Dania Beach
3:08:56 PM Roll call on SB 1450
3:09:14 PM Bill passes
3:09:31 PM Adjournment