SB 954 by **Gardiner**; (Similar to H 4033) Technological Research and Development Authority

SB 628 by **Joyner**; (Identical to H 0987) Driver Licenses

CS/CS/SB 166 by **JU, BI, Richter**; (Similar to CS/H 0167) Annuities

SB 230 by **Ring**; (Identical to H 0323) Flag Etiquette

CS/SB 120 by **RI, Latvala**; (Similar to CS/CS/H 0175) Condominiums

460676	A	S		RCS	RC, Latvala	Delete L.488:	03/21 12:42 PM

CS/SB 1096 by **ED, Montford**; (Identical to CS/CS/H 7001) Repeal of Education Provisions

CS/SB 718 by **JU, Stargel (CO-INTRODUCERS) Grimsley, Richter, Thrasher, Soto, Altman**; (Similar to CS/CS/H 0231) Dissolution of Marriage

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CS/SB 60 by **HP, Hays**; (Identical to CS/H 0529) Public Records/Identifying Information of Department of Health Personnel

SB 452 by **HP**; (Similar to H 7085) OGSR/Joshua Abbot Organ and Tissue Registry/Donor Information

CS/SB 530 by **JU, Thrasher**; (Similar to CS/H 0693) Dispute Resolution

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Thursday, March 21, 2013
TIME: 8:00 —9:30 a.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 954** Gardiner (Similar H 4033, Compare CS/H 1013)	Technological Research and Development Authority; Deleting provisions for distribution by the Department of Highway Safety and Motor Vehicles to the Technological Research and Development Authority of Challenger/Columbia license plate user fees; deleting provisions for distribution by the Fish and Wildlife Conservation Commission to the authority of saltwater license and permit fees; amending provisions relating to giving gifts to certain officers or candidates for office and to procurement employees; deleting reference to the authority, etc. TR 03/07/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 15 Nays 0
2	**SB 628** Joyner (Identical H 987)	Driver Licenses; Authorizing a justice, judge, or designated employee to access reproductions of driver license images as part of the official work of a court, etc. JU 02/19/2013 Favorable TR 03/07/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 15 Nays 0
3	**CS/CS/SB 166** Judiciary / Banking and Insurance / Richter (Similar CS/H 167)	Annuities; Providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age, etc. BI 02/06/2013 Fav/CS JU 03/06/2013 Fav/CS RC 03/21/2013 Favorable	Favorable Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 230** Ring (Identical H 323)	Flag Etiquette; Requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag, etc. GO 03/14/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 15 Nays 0
5	**CS/SB 120** Regulated Industries / Latvala (Similar CS/CS/H 175, Compare CS/CS/CS/H 73, CS/CS/S 436)	Condominiums; Allowing condominium units to come into existence regardless of requirements or restrictions in a declaration; extending the amount of time that a clerk of the circuit court may hold a sum of money before notifying the registered agent of an association that the sum is still available and the purpose for which it was deposited; changing the requirements relating to the circumstances under which a declaration of condominium or other documents are effective to create a condominium; revising the conditions under which a developer may amend a declaration of condominium governing a phase condominium; providing for an extension of the 7-year period for the completion of a phase, etc. RI 01/24/2013 Fav/CS JU 03/12/2013 Favorable RC 03/21/2013 Fav/CS	Fav/CS Yeas 15 Nays 0
6	**CS/SB 1096** Education / Montford (Identical CS/CS/H 7001, Compare CS/H 1033, H 7091, CS/CS/S 878, CS/S 1664)	Repeal of Education Provisions; Repeals various provisions of law and removes duplicative, redundant, or unused rulemaking authority relating to education, etc. ED 03/06/2013 Fav/CS AP 03/14/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 15 Nays 0
7	**CS/SB 718** Judiciary / Stargel (Similar CS/CS/H 231, Compare S 1466)	Dissolution of Marriage; Revising factors to be considered for alimony awards; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; revising provisions relating to the protection of awards of alimony; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified because of the later modification or termination of child support payments, etc. JU 03/12/2013 Fav/CS RC 03/21/2013 Fav/CS	Fav/CS Yeas 12 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 60** Health Policy / Hays (Identical CS/H 529)	Public Records/Identifying Information of Department of Health Personnel; Providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/21/2013 Fav/CS GO 03/14/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 14 Nays 0
9	**SB 452** Health Policy (Similar H 7085)	OGSR/Joshua Abbot Organ and Tissue Registry/Donor Information; Providing an exemption from public records requirements for personal identifying information of a donor held in the Joshua Abbott Organ and Tissue Registry; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc. GO 03/14/2013 Favorable RC 03/21/2013 Favorable	Favorable Yeas 14 Nays 0
10	**CS/SB 530** Judiciary / Thrasher (Similar CS/H 693)	Dispute Resolution; Revising the short title of the "Florida Arbitration Code" to be the "Revised Florida Arbitration Code"; providing that an agreement may waive or vary the effect of statutory arbitration provisions; requiring a court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate; providing that a person waives any objection to lack of or insufficiency of notice by appearing at the arbitration hearing; requiring certain disclosures of interests and relationships by a person before accepting appointment as an arbitrator, etc. JU 02/19/2013 Fav/CS RC 03/21/2013 Favorable	Favorable Yeas 14 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 954
INTRODUCER:	Senator Gardiner
SUBJECT:	Technological Research and Development Authority
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Favorable**
2.	Everette	Phelps	RC	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

SB 954 removes each reference to the Technological Research and Development Authority (TRDA)[1] from Florida Statute. Specifically, the bill removes the TRDA from:

- s. 320.08058, F.S., relating to use of funds accruing from the sale of the Challenger/Columbia specialty license plates;
- s.379.2202, F.S., relating to the list of commissions receiving federal funds through saltwater license and permit fees collected under s. 379.354, F.S.; and
- s. 112.3148(6)(a)(b), F.S., relating to reporting of receipt of gifts by public disclosure of financial interests and by procurement of employees.

This bill substantially amends the following sections of the Florida Statutes: 320.08058, 379.2202, and 112.3148.

II. Present Situation:

Technological Research and Development Authority (TRDA)
The TRDA is headquartered in Melbourne, Florida and consists of a board of directors, an advisors' board, and executives in residence. The authority is codified in ch.2005-337, Laws of Florida, as a technology-based economic development organization with the purposes of promoting research and development and fostering higher education in Brevard County to diversify the economic base of the county and the state.

[1] Created by s. 2, chapter 87-455, Laws of Florida

On March 1, 2012 in the U.S. District Court for the Southern District of Mississippi, a petition for termination and dissolution was necessitated by a lawsuit filed against TRDA by the United States Department of Justice (DOJ). Through the lawsuit, DOJ seeks to recover federal grant money from TRDA for alleged unallowable costs associated with business incubation projects in Syracuse, New York and Melbourne, Florida during a period from 2002 through 2006. After considerable review of the issues raised by DOJ, and the options available to TRDA, on May 30, 2012, the TRDA Board of Directors, by a vote of four (4) for and none (0) against, authorized the entering into of settlement negotiations with DOJ.

On November 15, 2012 the TRDA Board of Directors approved the execution of a Settlement Agreement with DOJ. Though entering into a Settlement Agreement, TRDA does not admit liability.

The terms of the Settlement Agreement specify that TRDA would take the necessary steps to wind-down its operations and dissolve the organization. The wind-down period would take approximately 12-14 months.

Further, the terms specify that DOJ agrees not to enforce any judgment against TRDA's assets, presuming certain conditions are met. In addition, DOJ releases TRDA's current Board of Directors and staff from civil liability related to the conduct alleged in the lawsuit.

Challenger/Columbia Specialty License Plate
In 2003, the department developed the Challenger/Columbia license plate to commemorate the seven astronauts who died when the space shuttle Challenger exploded on liftoff in 1986, and the seven astronauts who died when the Columbia exploded on reentry in 2003. Section 320.08058(2), F.S., authorizes fifty percent of the Challenger/Columbia license plate annual use fees to be distributed to the Astronauts Memorial Foundation, Inc.,[2] to support the operations of the Center for Space Education and the Education Technology Institute. The other fifty percent is distributed to the Technological Research and Development Authority, for the purpose of funding space-related research grants, the Teacher/Quest Scholarship Program[3] under s. 1009.61, F.S., as approved by the Florida Department of Education, and space-related economic development programs. The TRDA coordinates and distributes available resources among state universities and independent colleges and universities based on the research strengths of such institutions in space science technology, community colleges, public school districts, and not-for-profit educational organizations.

Marine Resources Conservation Trust Fund
Section 379.2201, F.S., provides that the TRDA receives funds through all saltwater license and permit fees collected and deposited into the Marine Resources Conservation Trust Fund to be used for administration of licensing programs and education, fishery enhancements, and marine research and management, among other things.

[2] The Astronauts Memorial Foundation honors and memorializes those astronauts who have sacrificed their lives for the nation and the space program by sponsoring the national Space Mirror Memorial, and implementing innovative educational technology programs. The Memorial was founded in the wake of the Challenger accident 1986. http://floridaspacegrant.org/affiliates-info/the-astronauts-memorial-foundation/

[3] Provides teachers with the opportunity to enhance his or her knowledge of science, math, and computer applications in business, industry and government.

Reporting of Gifts by Employees
The provisions of s. 112.3148, F.S., requires reporting and filing of receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.

III. Effect of Proposed Changes:

The bill amends s. 320.08058(2), F.S., by deleting the fifty percent distribution of the annual use fee collected through the sale of Challenger/Columbia specialty license plates, to the TRDA. The other fifty percent of use fee funds collected are distributed to the Astronauts Memorial Foundation, Inc., to support the operations of the Center for Space Education and the Education Technology Institute. With the passage of this bill, the Astronauts Memorial Foundation, Inc., will receive the full collection of annual use fees to support the operations of the Center for Space Education and the Education Technology Institute. The provision takes effect September 30, 2013.

The bill amends s. 379.2202, F.S., to remove the TRDA from the research institutions receiving funds from the Marine Resources Conservation Trust Fund under s. 379.2201, F.S. The provision takes effect July 1, 2013.

The bill also amends s. 112.3148, F.S., and removes the requirement of the TRDA of reporting receipt of gifts by individuals filing full or limited public disclosure of financial interests. The provision takes effect December 31, 2013.

The bill, except otherwise expressed above, takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

B. Private Sector Impact:

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gardiner

13-00302B-13 2013954__

A bill to be entitled

An act relating to the Technological Research and Development Authority; amending s. 320.08058, F.S.; deleting provisions for distribution by the Department of Highway Safety and Motor Vehicles to the authority of Challenger/Columbia license plate user fees; conforming provisions; amending s. 379.2202, F.S.; deleting provisions for distribution by the Fish and Wildlife Conservation Commission to the authority of saltwater license and permit fees; amending s. 112.3148, F.S., relating to giving gifts to certain officers or candidates for office and to procurement employees; deleting reference to the authority; providing contingent effective dates.

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

Section 1. Effective September 30, 2013, subsection (2) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(2) CHALLENGER/COLUMBIA LICENSE PLATES.—

(a) The department shall develop a Challenger/Columbia license plate to commemorate the seven astronauts who died when the space shuttle Challenger exploded on liftoff in 1986 and the seven astronauts who died when the Columbia exploded on reentry in 2003. The word "Florida" shall appear at the top of the plate, and the words "Challenger/Columbia" must appear at the bottom of the plate, in small letters.

(b) ~~Fifty percent of~~ The Challenger/Columbia license plate

13-00302B-13 2013954__

annual use fee must be distributed to the Astronauts Memorial Foundation, Inc., to support the operations of the Center for Space Education and the Education Technology Institute. Funds received by the Astronauts Memorial Foundation, Inc., may be used for administrative costs directly associated with the operation of the center and the institute. These funds must be used for the maintenance and support of the operations of the Center for Space Education and the Education Technology Institute operated by the Astronauts Memorial Foundation, Inc. These operations must include preservice and inservice training in the use of technology for the state's instructional personnel in a manner consistent with state training programs and approved by the Department of Education. Up to 20 percent of funds received by the Center for Space Education and the Education Technology Institute may be expended for administrative costs directly associated with the operation of the center and the institute.

~~(c) Fifty percent must be distributed to the Technological Research and Development Authority created by s. 2, chapter 87-455, Laws of Florida, for the purpose of funding space-related research grants, the Teacher/Quest Scholarship Program under s. 1009.61 as approved by the Florida Department of Education, and space-related economic development programs. The Technological Research and Development Authority shall coordinate and distribute available resources among state universities and independent colleges and universities based on the research strengths of such institutions in space science technology, community colleges, public school districts, and not-for-profit educational organizations.~~

(c) ~~(d)~~ Up to 10 percent of the funds distributed under paragraph (b) ~~paragraphs (b) and (c)~~ may be used for continuing promotion and marketing of the license plate.

(d) ~~(c)~~ The Auditor General has ~~the~~ authority to examine any and all records pertaining to the Astronauts Memorial Foundation, Inc., ~~and the Technological Research and Development Authority~~ to determine compliance with the law.

Section 2. Effective July 1, 2013, section 379.2202, Florida Statutes, is amended to read:

379.2202 Expenditure of funds.—Any moneys available pursuant to s. 379.2201(1)(c) may be expended by the commission within Florida through grants and contracts for research with research institutions including but not limited to: Florida Sea Grant; Florida Marine Resources Council; Harbour Branch Oceanographic Institute; ~~Technological Research and Development Authority;~~ Fish and Wildlife Research Institute of the Fish and Wildlife Conservation Commission; Mote Marine Laboratory; Marine Resources Development Foundation; Florida Institute of Oceanography; Rosentiel School of Marine and Atmospheric Science; and Smithsonian Marine Station at Ft. Pierce.

Section 3. Effective December 31, 2013, paragraphs (a) and (b) of subsection (6) of section 112.3148, Florida Statutes, are amended to read:

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.—

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district

created pursuant to s. 373.069, South Florida Regional Transportation Authority, ~~the Technological Research and Development Authority,~~ a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of $100 to any reporting individual or procurement employee if a public purpose can be shown for the gift; and a direct-support organization specifically authorized by law to support a governmental entity may give such a gift to a reporting individual or procurement employee who is an officer or employee of such governmental entity.

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of $100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, ~~the Technological Research and Development Authority,~~ a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANDY GARDINER
13th District

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 7, 2013

RECEIVED
MAR 07 2013
SENATE
RULES COMMITTEE

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher,

Senate Bill 954 Technological Research and Development Authority has been referred to your committee. This legislation dissolves the Technological Research and Development Authority and removes references to the TRDA from relevant statutes. I respectfully request that Senate Bill 954 be heard before your committee.

If you have any questions regarding this request, please do not hesitate to call my office. Thank you for your time and consideration of this matter.

Sincerely,

Senator Andy Gardiner

AG:gh

Cc: Mr. John Phelps, Staff Director

REPLY TO:
☐ 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic TECHNOLOGICAL RESEARCH & DEVELOPMENT AUTHORITY

Bill Number SB 954 *(if applicable)*

Name CHESTER STRAUB

Amendment Barcode *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 1050 W. NASA BLVD.
Street
MELBOURNE FL 32901
City *State* *Zip*

Phone 321-872-1050 x101

E-mail CSTRAUB@TRDA.ORG

Speaking: ☑ For ☐ Against ☐ Information

Representing TECHNOLOGICAL RESEARCH & DEVELOPMENT AUTHORITY

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)

3/21/2013
Meeting Date

Topic _____ Bill Number 959 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 628
INTRODUCER:	Senator Joyner
SUBJECT:	Driver Licenses
DATE:	March 15, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.	Everette	Eichin	TR	**Favorable**
3.	Brown	Phelps	RC	**Favorable**
4.				
5.				
6.				

I. Summary:

SB 628 allows judges and certain employees of the state courts system to access copies of driver's licenses held by the Department of Highway Safety and Motor Vehicles (department). Currently, the department has no duty to share copies of driver's licenses with the judicial branch.

This bill substantially amends section 322.142, Florida Statutes.

II. Present Situation:

Driver's Licenses

The Department of Highway Safety and Motor Vehicles (department) must issue qualified applicants a driver's license at the time that the licensee successfully passes the required examinations and pays a fee.[1]

The driver's license must contain:

- A color photograph or digital image of the licensee.
- The name of the state.
- An identification number uniquely assigned to the licensee.
- The licensee's full name, date of birth, and residence address.
- The licensee's gender and height.
- The dates of issuance and expiration of the license.

[1] Sections 322.14(1)(a) and 322.142(1), F.S.

- A signature line.
- The class of vehicle authorized and endorsements or restrictions.[2]

The department is authorized to maintain a film negative or print file pictures of licensees. The department must keep a record of the digital image and licensee signature, along with identifying data to retrieve the record.[3]

This information is exempt from disclosure requirements under public records laws. However, the file and digital record may be released for the following purposes:

- For the issuance of duplicate licenses; and
- For administrative purposes of the department.[4]

Records can also be released to the following parties for specific purposes:

- Law enforcement agencies.
- Department of Business and Professional Regulation.
- Department of State.
- Department of Revenue.
- Department of Children and Family Services.
- Department of Financial Services.[5]

The most recent change to this public records exemption was in 2010, when the exemption was narrowed. The Legislature authorized the Department of Children and Family Services to have access to the records for additional purposes related to public assistance and public assistance fraud investigations.[6]

The Office of State Courts Administrator

The Office of State Courts Administrator (OSCA) requested the changes provided in this bill. OSCA indicates a need for this legislation as follows:

> By department policy, judges have access to [driver's license] photographs, and by past practice, some court-related employees have access. However, neither judges nor court-related employees are specifically delineated for access in the applicable statute. The [Department of Highway Safety and Motor Vehicles] has begun to interpret the statute more strictly, resulting in some court-related employees being unable to access the photographs.
>
> The courts' Judicial Inquiry System (JIS) draws information from a number of data sources. Specifically, JIS offers the judiciary access to a streamlined dashboard in

[2] Section 322.14 (1)(a) and (b), F.S.
[3] Section 322.142(4), F.S.
[4] Section 322.142 (4), F.S.
[5] Section 322.142 (4), F.S.
[6] Section 1, ch. 2010-207, L.O.F. (CS/SB 962).

which a user may query multiple data sources through a single point of entry. One of the data sources that may be accessed through JIS is the system containing driver's license photographs maintained by DHSMV. However, some judges and court-related employees also may access the DHSMV system directly.[7]

According to OSCA, judges have had access to the records based on the statute's authority for release to law enforcement agencies. Still, OSCA is concerned that the department is more strictly interpreting the public records exemption for driver's license records, and judges are not currently authorized in the exemption to receive records. Additionally, the other judicial branch employees have encountered resistance in accessing these records.

Public Records

The Florida Constitution specifies requirements for public access to government records. 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.[8] The records of the legislative, executive, and judicial branches are specifically included.[9]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S.,[10] guarantees every person's right to inspect and copy any state or local government public record[11] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[12]

Only the Legislature may create an exemption to public records.[13] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[14]

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[7] Office of the State Courts Administrator, *White Paper: Legislative Issue: Driver's License Photographs* (2013) (on file with the Senate Committee on Judiciary).
[8] FLA. CONST., Art. I, s. 24(a).
[9] *Id*.
[10] Chapter 119, F.S.
[11] 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)).
[12] Section 119.07(1)(a), F.S.
[13] 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 (s*ee 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).
[14] FLA. CONST., Art. I, s. 24(c).

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 provisions[15] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[16]

III. Effect of Proposed Changes:

This bill narrows the public records exemption for copies of driver's license files and digital records by expressly authorizing the following parties to receive copies as part of the official work of a court:

- A justice or judge of the state.
- An employee of the state courts system who holds a position that is designated in writing for access by the Supreme Court Chief Justice or a chief judge of a district or circuit court, or his or her designee.
- A government employee who performs functions for the state court system in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or their designee.

This bill updates obsolete references to the Department of Children and Family Services to the Department of Children and Families.[17]

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill narrows an existing public records exemption. It complies with the requirements of s. 24(c), Article I of the Florida Constitution. Because the bill does not create a new exemption, it does not require a statement of public necessity or two-thirds vote approval of each house for passage as required by s. 24(c), Article I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

[15] The bill may, however, contain multiple exemptions that relate to one subject.
[16] FLA. CONST., Art. I, s. 24(c).
[17] Chapter 2012-84 (SB 2048).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An insignificant positive fiscal impact may be associated with this bill in that the courts and OSCA employees may have easier access to these records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Joyner

19-00516A-13 2013628__

A bill to be entitled

An act relating to driver licenses; amending s. 322.142, F.S.; authorizing a justice, judge, or designated employee to access reproductions of driver license images as part of the official work of a court; revising and clarifying provisions; providing an effective date.

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

Section 1. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

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

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

(d) To the Department of Business and Professional Regulation pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation;

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter

19-00516A-13 2013628__

registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

(f) To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases;

(g) To the Department of Children and Families ~~Family Services~~ pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;

(h) To the Department of Children and Families ~~Family Services~~ pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;

(i) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims; ~~or~~

(j) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.11 ~~406.011~~; or

(k) To the following persons for the purpose of identifying a person as part of the official work of a court:

1. A justice or judge of this state;

2. An employee of the state courts system who works in a

position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or

3. A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 7, 2013

Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This is to request that Senate Bill 628, Driver Licenses, be placed on the agenda for the Committee on Rules. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

Tracy

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 19, 2013

402

Senator John Thrasher, Chair
Senate Committee on Rules
420 Senate
Tallahassee, FL 32399

Dear Chairman Thrasher:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present Senate Bill 628 regarding Driver Licenses to the Committee on Rules on March 21. Allowing my assistant to present this bill will be greatly appreciated since I will not be able to personally present it due to prior commitment during that time.

Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
Senator, District 19

ALJ/rr

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

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic Driver License Photos

Bill Number 628 *(if applicable)*

Name Eric Maclure

Amendment Barcode *(if applicable)*

Job Title Intergov. Relations, Office of State Courts Administrator

Address 500 South Duval St.
Street
Tallahassee, FL 32399
City *State* *Zip*

Phone 850-922-5692

E-mail Macluree@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

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic _____ Bill Number 628 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 166
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Richter
SUBJECT:	Annuities
DATE:	March 15, 2013 REVISED: 03/21/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Knudson	Phelps	RC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 166 substantially revises Florida consumer protection laws relating to sales of annuities by incorporating the 2010 National Association of Insurance Commissioners (NAIC) model regulation on annuity protections.[1] The bill expands the scope of the consumer protection laws to generally include all consumers purchasing annuities. Current law only applies the protections to consumers aged 65 and older. The bill also retains current law limiting the surrender charges and deferred sales charges that may be imposed upon senior consumers.

The primary consumer protections contained in the bill:

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer's

[1] The National Association of Insurance Commissioners established the model act to better protect consumers from inappropriate and abusive marketing practices. The model act of 2010 represents a revision of the original 2003 act, initially revised in 2006. The NAIC website is available at: http://naic.org/. A press release on the model act of 2010 is available at: http://www.naic.org/Releases/2010_docs/annuity_marketing_protections.htm. (last visited March 1, 2013).

suitability information. The bill imposes additional duties on insurers and insurance agents when a transaction involves the exchange or replacement of an annuity.

Documentation of Sales Transaction – The bill requires agents and agent representatives to record recommendations made to a consumer.

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer's request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Unconditional Refund Period – The bill expands to 21 from 14 days the unconditional refund period for all purchasers of fixed and variable annuities.

Limit on Surrender Charges – The bill retains the prohibition against surrender charges or deferred sales charges in annuity contracts issued to a senior consumer exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

Penalties – Authorizes the imposition of corrective action, appropriate penalties, and sanctions on insurers, agents, managing general agencies, or insurance agencies that violate the requirements of s. 627.4554, F.S. An insurance agent must pay restitution to a consumer whose money the agent misappropriates, converts, or unlawfully withholds.

This bill substantially amends sections 627.4554 and 626.99, Florida Statutes.

II. Present Situation:

Annuities

An annuity is a contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments.

Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. Both deferred and immediate annuities are long-term contracts that typically restrict an investor's ability to access money placed in the annuity. Restricted access may make these annuities unsuitable for some consumers.

Fixed vs. Variable Annuities

The fixed annuity and the variable annuity are the two basic annuity types. A fixed annuity guarantees fixed payments to the annuitant. During the accumulation phase, the insurance company agrees to pay no less than a specified rate of interest. The insurance company also agrees that during the annuitization phase periodic payments will be a specific amount. These periodic payments may last for a definite period, such as 20 years, or a lifetime. Licensed life insurance and annuity agents sell fixed annuities, considered insurance products.

A variable annuity provides a rate of return that is not guaranteed and is based on the success of the investment option that underlies the annuity. In a variable annuity, premium dollars are placed into a variety of investments known as subaccounts. The performance of the investments (usually stocks, bonds, or money market instruments) in the subaccounts determines the performance of the annuity. Variable annuities offer a wide range of subaccount investment options with varying degrees of risk. Variable annuities are considered investment products and are regulated by both securities regulators and state insurance departments. Agents selling this type of annuity must hold a variable annuity license from the state insurance regulator, a securities license and an active securities registration with a broker/dealer. Variable annuity sales are subject to the suitability standards contained in Financial Industry Regulatory Authority (FINRA) Rule 2330.[2]

Equity Indexed Annuities

Equity indexed annuities are defined and regulated as fixed annuity products, but operate as more of a hybrid of a fixed and variable annuity. Equity indexed annuities provide a "minimum guaranteed" interest rate in combination with an index-linked component. In contrast, a traditional fixed annuity provides a specific guaranteed rate of interest.

The investment industry often aggressively markets equity indexed annuities to seniors in Florida. The products are touted as a vehicle for investors to realize gains similar to those in the stock market without the corresponding risk. However, such annuities rarely provide returns that are the equivalent of a stock market index. Additionally, even with a guaranteed minimum interest rate, investors may still lose money on an equity indexed annuity if the rate is less than the premium or initial payment. Investors who need to cancel an annuity to access funds prior to the maturity of the contract may lose principal through surrender charges.

Equity indexed annuities are complex and can contain many detrimental features such as hidden penalties, fees, and large multi-year surrender charges. The federal Securities and Exchange Commission does not require these annuities to be registered as they do variable annuities, as equity indexed annuities are not securities. As a result, the law does not require a prospectus that

2 Financial Industry Regulatory Authority, Regulatory Notice 10-05: Deferred Variable Annuities (Jan. 2010) *available* at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120756.pdf. The Financial Industry Regulatory Authority (FINRA) is an independent regulator for all securities firms operating in the United States. FINRA's mission is to protect U.S. investors by ensuring fair and honest operation by the securities industry. FINRA oversees about 4,275 brokerage firms, about 161,495 branch offices and approximately 630,010 registered securities representatives. Read more at: http://www.finra.org/AboutFINRA/ (last visited March 1, 2013).

discloses possible risks to accompany equity indexed annuities. Additionally, unlike variable annuity products that may only be sold by agents holding securities and insurance licenses, agents holding just an insurance license may sell equity indexed annuities.

Equity based annuities have several unique factors used to calculate interest that may affect potential return.

- Interest Rate Caps – A maximum rate of interest that an investor will receive, even if the underlying stock market index performs well. For example, if an equity indexed annuity has a cap of 6 percent the investor is limited to a 6 percent return even if the underlying investment index earns a much higher percentage.
- Participation Rates – A participation rate determines how much of the increase or return of the underlying stock market index will be used to calculate the annuity's return on investment. For example, if the participation rate is 70 percent, and the index increases by 20 percent as a multiplier, the return credited to the equity indexed annuity will be only 14 percent.
- Index Crediting Methods – An index crediting method permits investors to choose how interest is credited to equity indexed annuities. For instance, the annual ratchet method usually credits an amount of interest based on the increase (if any) in value of the underlying index from the beginning to the end of the year. The point-to-point method credits an amount of interest based on any increase in the value of the underlying index from the beginning to the end of a specific period of time, sometimes based on the contract date.

Equity indexed annuities often have various fees and charges. These include:

- Surrender Charges – These vary dramatically among annuities and can be as high as 25 percent and be valid for up to 20 years.
- Administrative Fees or Margins – The fees in some equity indexed annuities amount to the difference between the percentage gain in the index and the actual amount credited to the investor. These fees or "margins" are not always disclosed clearly in marketing materials or contracts.
- Market Value Adjustments – These typically function to alter or reduce the cash value of an annuity dependent on changes in the interest rate since the contract's issue. Such adjustments may result in a loss of previously credited bonuses or interest credits.
- Asset Fees – These fees are charged by the company, based upon a percentage of the value of the annuity, sometimes subject to change annually.

It is important to note that whether an annuity is fixed, variable or equity indexed, the industry does not require that the annuity contract be provided to the consumer prior to or at the time of purchase. Thus, the consumer must rely on the representations of the agent. Florida requires that contracts contain a free look provision that allows consumers to read and review their contracts and request cancellation within 10 days after receiving the contract.

Common Types of Annuity and Life Insurance Fraud

When unsuitable annuities are sold to consumers, the transaction commonly involves inappropriate conduct by the agent such as misrepresentations and material omissions designed

to hide the fact that the product is not suitable to meet the consumer's needs. Forgery is commonplace. Annuity or life insurance transactions involving misrepresentations or material omissions are administratively prosecutable under the Unfair Insurance Trade Practices Act in chapter 626, F.S.

Two common unfair insurance trade practices are "twisting" and "churning." Twisting involves knowingly making misleading representations, incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer to take an action regarding their current insurance policy or purchase a policy from another insurer.[3] Churning is similar to twisting, but instead involves the surrender or withdrawal from a product to fund another product issued by the same company.[4] Agents that engage in these practices do so to obtain additional agent commissions.

Suitability of Annuity and Life Insurance Products

In Florida, the suitability, or the appropriateness of a particular product relative to the consumer's age, investment objectives, and current and future financial need, is a primary concern with regard to transactions involving senior consumers. In 2004, the Florida Legislature enacted the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.[5] The 2008 Legislature subsequently passed the John and Patricia Seibel Act, which strengthened Florida's annuity standards and procedures.[6] The 2010 Legislature further strengthened these standards.[7]

Section 627.4554, F.S., provides standards and procedures to follow when recommending the purchase of an annuity product to senior consumers (age 65 and older). The agent or insurer must make reasonable efforts to obtain information about the senior's financial status, tax status, and investment objectives before selling an annuity. The agent or insurer must have objectively reasonable grounds for recommending the annuity based on facts disclosed by the senior consumer as to current investments, other insurance products, financial situation, and needs.[8] If an agent recommends replacing or exchanging an existing, for a new annuity, the agent must provide a written summary detailing the differences between the two products.[9] The disclosure must provide benefits, terms, limitations, fees, and charges of each annuity, and the basis for the agent's recommendation, including all relevant information considered.[10] Insurers and insurance agents are required to develop written procedures to ensure compliance with statutory disclosure requirements.

Florida law also allows consumers to obtain an unconditional refund within 14 days of entering into a fixed or variable annuity contract.[11] Senior consumers may obtain these refunds within 21 days. Annuity contracts issued to senior consumers cannot include a surrender or deferred sales

[3] Section 626.9541(1)(l), F.S.
[4] Section 626.9541(1)(aa), F.S.
[5] Section 146, ch. 2004-390, L.O.F.
[6] Section 9, ch. 2008-237, L.O.F.
[7] Section 52, ch. 2010-175, L.O.F.
[8] Section 627.4554(4), F.S.
[9] Section 627.4554(4)(d), F.S.
[10] The written disclosure must be made on a form developed by the Department of Financial Services.
[11] Section 626.99(4)(b), F.S.

charge for a withdrawal of money that exceeds 10 percent of the amount withdrawn.[12] Florida law requires surrender or deferred sales charges to expire after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

If a senior consumer is harmed due to the failure of an insurer or insurance agent to comply with the provisions, the insurer or insurance agent may be ordered to take corrective action.[13] The Office of Insurance Regulation (OIR) has authority to order the rescission of the annuity contract and order the refund of all premiums paid or the accumulation value of the annuity, whichever is greater. The Department of Financial Services (DFS) may order an insurance agent to provide monetary restitution of all monies misappropriated, converted, or unlawfully withheld as well as restitution of penalties and fees incurred by a senior consumer. The DFS may also require insurance agencies to take reasonably appropriate corrective action for a senior consumer harmed by an agent's noncompliance.

Unfair Insurance Trade Practices Act

Part IX of chapter 626, the Unfair Insurance Trade Practices Act specifies and prohibits practices that constitute unfair methods of competition or unfair or deceptive acts. The DFS can fine insurers, insurance agents, and any other person involved in the business of insurance for violating the act, up to $5,000 for each non-willful violation up to an aggregate $20,000 fine, and up to $40,000 for each willful violation up to an aggregate $200,000 fine. Willful violations of these provisions are also subject to criminal prosecution as a second degree misdemeanor.[14] Each act is a third degree felony if committed by a person who is not licensed, authorized, or eligible to engage in business under the Florida Insurance Code.[15]

Further, the unfair trade practice laws authorize the OIR or the DFS to issue cease and desist orders against insurers and agents that violate those provisions.[16] Violation of a cease and desist order is subject to a penalty of up to $50,000.[17] The DFS and the OIR can also suspend or revoke the license of an insurance agent that violates this section and impose an administrative penalty of up to $500 or, for willful violations, up to $3,500.[18]

Certain violations such as "twisting" and "churning" are subject to increased penalties.[19] Violators can be criminally charged with first degree misdemeanors.[20] Each non-willful violation is subject to a $5,000 fine up to an aggregate $50,000 fine, while each willful violation is subject to a $75,000 fine up to an aggregate $250,000 fine. Willfully submitting fraudulent signatures on an application or policy-related document is a third degree felony, and is subject to an administrative fine not greater than $5,000 for each nonwillful violation up to an aggregate fine

[12] Section 627.4554(9), F.S.
[13] Section 627.4554(5), F.S.
[14] Section 624.15(1), F.S. Section 775.082(4)(b), F.S., provides for a term of imprisonment for up to 60 days for a second-degree misdemeanor
[15] Section 775.082(3)(d), F.S., provides for a term of imprisonment for up to 5 years for a third-degree felony.
[16] Section 626.9581(1), F.S.
[17] Section 626.9601(1), F.S.
[18] Section 626.681(1), F.S.
[19] Section 626.9521(3), F.S.
[20] Section 775.082(4)(a), F.S., provides for a term of imprisonment for up to 1 year for a first-degree misdemeanor.

of $50,000, while each willful violation is subject to an administrative fine not greater than $75,000 up to an aggregate fine of $250,000.

III. Effect of Proposed Changes:

Section 1. Expands the annuity recommendation standards provided in s. 627.4554, F.S., for the protection of senior consumers to apply to all consumers. The bill incorporates the 2010 National Association of Insurance Commissioners model regulation on annuity protections, to broaden the scope of coverage to generally include all annuity transactions. Bill language also imposes additional duties on agents and insurers.[21] The bill also retains Florida-specific consumer protections that are currently available to senior consumers, often expanding them to all consumers.

Major provisions of this section address:

Duties of Insurers and Agents

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer's suitability information. Current law requires the insurer or agent to have "objectively reasonable" grounds for believing the recommendation is suitable. The bill's use of only term "reasonable" does not change current law which requires the insurer or agent to base the suitability determination on grounds that the average, reasonable insurer or agent to find sufficient to determine that the recommendation is suitable for the consumer. The insurer or agent must also have a reasonable basis to believe that:

- The consumer has been reasonably informed of:
  - The annuity's features such as the potential surrender period and surrender charge;
  - Potential tax penalties if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
  - Mortality and expense fees;
  - Investment advisory fees;
  - Riders, their features, and potential charges;
  - Limits on interest returns;
  - Insurance and investment components; and
  - Market risk.
- The consumer will benefit from certain features of the annuity such as tax-deferred growth, annuitization, or the death or living benefit.
- The annuity and any associated subaccounts, riders, and product enhancements are suitable. If the annuity is being exchanged or replaced, the annuity must be suitable for the particular consumer based on his or her suitability information.

[21] Unless stated otherwise, the bill expands the application of the statute to all consumers.

Before recommending products, insurance agents must obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation on a form promulgated by the DFS (DFS-H1-1980).

Suitability of the Exchange or Replacement of an Annuity – The bill imposes additional duties on insurers or insurance agents if a transaction involves the exchange or replacement of an annuity. The bill provides criteria for determining whether the new annuity is suitable for a particular consumer. The insurer or agent must consider whether the consumer:

- Will incur a surrender charge; be subject to commencement of a new surrender period; lose existing benefits (death, living, or other contractual benefits), or be subject to increased fees (including investment advisory fees or charges for riders or other similar product enhancements).
- Will benefit from product enhancements and improvements; and
- Has had another annuity exchange or replacement, in particular within the past 36 months.

The insurer or agent must provide the consumer specified information on a DFS form (DFS-H1-1981) concerning differences between the annuity being recommended for purchase and the existing annuity that would be surrendered or replaced. Under current law, this only applies to transactions involving a senior consumer.

Requirement to Obtain Suitability Information – The bill retains the requirement in current law that the insurer or its agent use reasonable efforts to obtain a consumer's suitability information. An insurer may not issue an annuity unless a reasonable basis exists to believe the annuity is suitable based on the consumer's suitability information. However, the insurer or its agent are not obliged to have a reasonable basis for believing the annuity is suitable if no recommendation has been made, the recommendation was based on materially inaccurate information, the consumer refuses to provide relevant suitability information and the annuity transaction is not recommended, or the consumer decides to enter into an annuity transaction not based on a recommendation of an insurer or an agent.

Documentation of Sales Transaction – An agent or agent's representative must record any recommendation made to a consumer. If the consumer refuses to provide suitability information, the agent or representative must obtain a signed statement from the consumer documenting the refusal. If the consumer enters into an annuity transaction that is not based on the recommendation of the insurer or insurance agent, the agent or representative must obtain a signed statement from the consumer acknowledging that the annuity transaction is not recommended.

Compliance Measures – As under current law, insurers must establish a supervision system designed to ensure insurer and agent compliance with the statute. Measures include maintaining procedures to inform agents of their legal requirements when selling annuities, providing training and training materials on annuity products, maintaining procedures for reviewing each recommendation before issuing an annuity and procedures for detecting recommendations that are not suitable, and providing an annual report to senior managers.

This bill subjects insurers to liability for violations made by contract workers. Insurers may contract with outside entities to sell products, but if an insurer does so, insurers remain subject to sanctions and penalties and must supervise the contract performance. This appears to depart from current law, which provides: "Nothing in this section shall subject an insurer to criminal or civil liability for the acts of independent individuals not affiliated with that insurer for selling its products, when such sales are made in a way not authorized by the insurer."[22]

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer's request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Compliance and Penalties – Insurers are responsible for compliance with this section, both with regard to the insurer and its agents. The OIR may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the actions of the insurer or an insurer's agent. The bill removes language specifying that the OIR may require the rescission of the policy, a full refund of the premiums paid, or a refund of the accumulation value. Rescission is still, however, and option available to the OIR. The DFS may order reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer. The DFS must order an insurance agent to pay restitution to a consumer who is deprived of money due to the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to a consumer. The DFS also may order a managing general agency or insurance agency to take corrective action.

Insurance code penalties must be reduced or eliminated by the OIR or the DFS if corrective action for the consumer is promptly taken after the discovery of a violation.

A violation of the consumer protection standards in the bill does not create or imply the existence of a private cause of action. This limit on the effect of the bill is identical to limits on the effect of existing law.

Prohibited Sales and Surrender Charges on Senior Consumers – The bill retains the requirement in current law that an annuity contract issued to a senior consumer may not contain a surrender charge or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later. The provision contains exceptions for purchases by accredited investors and contracts used to fund specified benefit plans, personal injury litigation settlements, or prepaid funeral contracts.

Other Provisions – The bill also:

- Defines "suitability information" as information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer.
- Requires that annuity sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions also comply with the consumer protection

[22] Section 627.4554(1)(c), F.S.

requirements in the bill. This requirement only applies if the FINRA broker dealer sells an annuity and the suitability and supervision is similar to those applied to variable annuity sales; the insurer monitors the FINRA member broker-dealer; and the insurer provides information to the FINRA member broker-dealer in maintaining its supervision system.
- Requires insurers and agents to retain records an annuity transaction for 5 years.
- Grants rulemaking authority to the Department of Financial Services and the Financial Services Commission to adopt rules to administer the section.

Section 2. Amends s. 626.99, F.S., to apply to all consumers the requirement that annuity policies provide an unconditional refund for at least 21 days and be equal to the surrender value of the annuity contract. Current law provides only senior consumers with a 21 day unconditional refund period; for other consumers, the unconditional refund is available for 14 days. The bill specifies disclosures required on the mandatory cover page of an annuity contract to inform consumers of the bonus feature in the contract; that purchase of a contract may restrict access to money; that interest rates may be variable; and that the insurer is required to provide a prospectus.

Section 3. The bill has an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The consumer protections of s. 627.4554, F.S., will generally apply to all consumers purchasing annuities. To the extent that the protections provide greater transparency and protection against fraud and misrepresentation, consumers who purchase annuities should realize cost savings.

C. Government Sector Impact:

The Office of Insurance Regulation (OIR) indicates that insurers will need to file revised contract forms for approval by the OIR. The OIR can absorb the increase in workload within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Judiciary on March 6, 2013:
The CS revises the disclosure statement required on the cover page of an annuity contract to inform purchasers that the interest rates that apply to the annuity contract may change periodically.

CS by Banking and Insurance on February 6, 2013:
- Clarifies DFS authority to order restitution for any consumer whose money has been unlawfully misappropriated, converted, or unlawfully withheld by an agent.
- Reinstates the rulemaking authority of the Financial Services Commission.

B. Amendments:

None.

By the Committees on Judiciary; and Banking and Insurance; and Senator Richter

590-01992-13 2013166c2

A bill to be entitled

An act relating to annuities; amending s. 627.4554, F.S.; providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; revising and providing definitions; providing exemptions; revising the duties of insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; prohibiting specified charges for annuities issued to persons 65 years of age or older; authorizing the Department of Financial Services and the Financial Services Commission to adopt rules; amending s. 626.99, F.S.; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

590-01992-13 2013166c2

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

Section 1. Section 627.4554, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.4554, F.S., for present text.)

627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any recommendation made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" has the same meaning as provided in s. 626.015.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(d) "Insurer" has the same meaning as provided in s. 624.03.

(e) "Recommendation" means advice provided by an insurer or its agent to a consumer which would result in the purchase,

exchange, or replacement of an annuity in accordance with that advice.

(f) "Replacement" means a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance

holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:

a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits,

such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. Would benefit from product enhancements and improvements; and

c. Has had another annuity exchange or replacement, including an exchange or replacement within the preceding 36 months.

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at

the time the annuity is issued. However, an insurer or its agent does not have an obligation to a consumer related to an annuity transaction under paragraph (a) or paragraph (c) if:

1. A recommendation has not been made;

2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.

(e) At the time of sale, the agent or the agent's representative must:

1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the

recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training;

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect

recommendations that are not suitable, such as confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate

corrective action and may be subject to sanctions and penalties pursuant to subsection (7) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(h) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(i) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions satisfy the requirements of this section. This applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance

transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent which results in harm to a consumer, the office may order the insurer to take reasonably appropriate corrective action for the consumer and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent, including monetary restitution of penalties or fees incurred by the consumer, and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful

withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(9) RULES.—The department and the commission may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for ~~a period of~~ at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before ~~prior to~~ delivery of the policy.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 21 ~~14~~ days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. Unconditional refund means ~~If the prospective owner of an annuity contract is 65 years of age or older~~:

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value

provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract, or a refund of all premiums paid. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.

(c) The insurer shall attach a cover page to any annuity contract ~~policy~~ informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent, and the department's toll-free help line~~, and any other information required by the department by rule~~. The cover page must also contain the following disclosures in bold print and at least 12-point type, if applicable:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO YOUR MONEY."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR CONTRACT FOR FURTHER DETAILS."

3. "THE INTEREST RATE APPLIED TO YOUR CONTRACT MAY BE SUBJECT TO CHANGE PERIODICALLY AND MAY INCREASE OR DECREASE, SUBJECT TO CERTAIN INTEREST RATE GUARANTEES DESCRIBED IN YOUR CONTRACT."

4. "A [PROSPECTUS AND CONTRACT SUMMARY] [BUYERS GUIDE] IS REQUIRED TO BE GIVEN TO YOU."

The cover page is part of the policy and is subject to review by the office pursuant to s. 627.410.

(d) The insurer shall provide a buyer's guide and a policy summary to a ~~any~~ prospective purchaser upon request.

Section 3. This act shall take effect October 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 6, 2013

The Honorable John Thrasher, Chair
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Thrasher:

CS/CS/Senate Bill 166, relating to Annuities is now in the Committee on Rules. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

21 Mar 13
Meeting Date

Topic Annuities

Bill Number 166 *(if applicable)*

Name Charles Milsted

Amendment Barcode _____ *(if applicable)*

Job Title Associate State Director

Address 200 West College Avenue
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-577-5190

E-mail cmilsted@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

Representing AARP

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 /21 /201
Meeting Date

Topic _____ Bill Number 166 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 230
INTRODUCER:	Senator Ring
SUBJECT:	Flag Etiquette
DATE:	March 15, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Favorable**
2.	McKay	Phelps	RC	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

SB 230 requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

This bill creates section 256.015 of the Florida Statutes.

II. Present Situation:

The Governor's Office has a written flag protocol.[1]

National Flag Policy

According to the Governor's protocol, by order of the President of the United States, the National flag must be flown at half-staff upon the death of specified principal figures of the United States or State Government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m). The State Flag must be flown at half-staff whenever the national Flag is flown at

[1] Executive Office of the Governor Flag Protocol, Revised 9/26/2012, available at http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf .

half-staff at the State Capitol, all state-owned buildings, and, in most cases, all courthouses and city halls throughout Florida for specified periods for the following persons:

- President or former President of the United States.
- Vice President, Chief Justice of the U.S. Supreme Court, former Chief Justice, or Speaker of the U.S. House of Representatives.
- Associate Justice of the U.S. Supreme Court, Secretary of an executive or military department, or former Vice President of the United States.
- Member of Congress from Florida.

State Flag Policy

In the event of the death of a present or former official of the Florida State government or the death of a member of the Armed Forces from Florida who dies while serving on active duty, the Governor may proclaim that the National and State Flags shall be flown at half-staff, in accordance with 4 U.S.C. Section 7. Rules for particular State Government officials and Armed Forces members are as follows:

- Present or former Governor of Florida: The National and State Flags shall be flown at half-staff from the day of death until the day of interment over the State Capitol, at State facilities throughout Florida, and at all county courthouses and city halls throughout Florida.
- Member of the Armed Forces from Florida who dies while serving on active duty: The National and State Flags shall be flown at half-staff on the day of interment (or day of family's preference) over the State Capitol and at the county courthouse and city hall in decedent's (or the family's) hometown.
- Prominent present or former State of Florida officials: The National and State Flags shall be flown at half-staff on the day of interment over the State Capitol and at the county courthouse and city hall in the decedent's hometown.
- Florida law enforcement officers and firefighters killed in the line of duty, and selected other State and local officials: The National and State Flags shall be flown at half-staff on the day of interment at the local agency where the decedent was employed and at the county courthouse and city hall in decedent's hometown.

The Governor's Flag Information website[2] contains a form[3] for requesting the state flag to be flown at half-staff in honor of law enforcement, firefighter, or elected officials. The form states that "[t]he flag will be lowered for law enforcement and firefighters only if they have passed while in the line of duty." Included in the Governor's protocol is a document entitled "Frequently Asked Questions." Information provided in response to one of the questions indicates that a constituent may request flags be flown at-half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.

[2] http://www.flgov.com/flag-information/
[3] http://www.flgov.com/wp-content/uploads/2012/07/Flag-at-Haff-Staff-Request-Form-for-web.pdf

Statutes/Flag Display

While there are currently a number of statutes requiring display of the National flag, the State flag, and the POW-MIA flag,[4] there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances.

There does not appear to be any statute specific to flag display involving a law enforcement officer who dies in the line of duty. However, s. 256.15, F.S., provides that the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.

III. Effect of Proposed Changes:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

The effective date of the act is July 1, 2013.

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.

[4] *See* ss. 256.01, 256.02, 256.011, 256.032, 256.11, 256.12, 256.13, 256.14, 256.15, and 1000.06, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill should not have any impact on the Governor's office since the Governor currently has a protocol on the display of the state flag.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Ring

29-00186-13 2013230__

A bill to be entitled

An act relating to flag etiquette; creating s. 256.015, F.S.; requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag; providing an effective date.

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

Section 1. Section 256.015, Florida Statutes, is created to read:

256.015 Display of flag.—

(1) The Governor shall adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

(2) The Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

Section 2. This act shall take effect July 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 120
INTRODUCER:	Rules Committee, Regulated Industries Committee, and Senator Latvala
SUBJECT:	Condominiums
DATE:	March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Shankle	Cibula	JU	**Favorable**
3.	Oxamendi	Phelps	RC	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 120 amends the Florida Condominium Act to clarify that regardless of any requirement or description that a declaration of condominium may provide regarding when a condominium is created, condominium units are created when the declaration is recorded.

For the following procedural time periods, the bill substitutes the recording date of the certificate of a surveyor and mapper, or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed), rather than the recording of the declaration of condominium:

- The deadline to bring an action to correct an omission or error in a declaration, which must be brought within 3 years after the recording of the first event;
- The beginning of the 2-year time period, during which the developer and unit owners, when the developer has not turned over control of the association, may vote to waive the financial reporting requirement;
- The date when the developer's right to waive or reduce the funding of reserves expires;

- The beginning date for the 12-month period during which an association may enter into agreements for leasehold interests or membership rights before such an agreement or leasehold is considered a material alteration or substantial addition to the association property which would require a majority vote of the total voting interests or as authorized by the declaration; and
- The beginning date for the time periods for the turnover of association control from the developer to the unit owners.

These changes allow a developer to record a declaration, and thus be able to provide a description of the property to a prospective buyer in compliance with the Interstate Land Sales Full Disclosure Act without beginning the running of any of the above time periods.

The bill extends to 5 years from 3 years the period of time that the county clerk is required to hold funds deposited by a developer who has not prepared and provided the surveyors certificate of the land which will be a part of the condominium. This provides additional time for developers to provide the surveyor's certificate of the land to the county clerk.

The bill revises the 7-year period for completion of all phases of a condominium project to provide that the 7-year period runs from the date the surveyor's affidavit of substantial completion is recorded, or 7 years from the date the sale of a unit to a non-developer is recorded in the initial phase of the condominium. The bill deletes from the current provision that counted the beginning of the 7-year period from the date the declaration was recorded. The bill also creates a mechanism to extend the seven-year time period for an additional 3 years.

This bill substantially amends the following sections of the Florida Statutes: 718.104, 718.105, 718.110, 718.111, 718.112, 718.114, 718.301, and 718.403.

II. Present Situation:

Creation of Condominiums

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration:

> strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[3]

Section 718.116(1), F.S., provides that a unit owner is liable for all assessments which come due while he or she is the unit owner. Section 718.103(12), F.S., defines the term "unit" as:

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

> a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

Upon recordation of the declaration or an amendment to an existing declaration that adds a phase to the condominium, all units described in the declaration or amendment as being located in or on the land then being submitted to condominium ownership comes into existence, regardless of the state of completion of planned improvements in which the units may be located. Upon recordation, the developer must file the recording information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation within 120 days.[4]

Units in Unconstructed Condominiums

Condominium units that are created when the declaration of condominium is recorded before the construction of the condominium is completed are known as "phantom condominium units." There is conflicting case law regarding the extent to which the owners of phantom units are subject to assessments on those units.

In *Hyde Park Condominium Association v. Estero Island Real Estate, Inc.*,[5] the Florida Second District Court of Appeal held that that the owner of unimproved lots in an unconstructed condominium was liable for unpaid assessments for common expenses on that property because the property was subject to a recorded declaration of condominium, and therefore a condominium had been created.

In *Winkelman v. Toll*,[6] the Florida Fourth District Court of Appeal also held that the owner of unimproved land that was subject to a recorded declaration of condominium was liable for assessments on that property.

However, in *R.I.S. Investment Group, Inc. v. Department of Business and Professional Regulation*,[7] the Fourth District Court of Appeal held that undeveloped "raw" land did not constitute a condominium unit which was subject to assessment. The court noted the detailed description of the unit in the declaration, which referenced boundaries of the unit to include a floor, a ceiling, and walls. The court relied on the "clear" intent of the scrivener of the declaration that undeveloped land did not constitute a unit.

Recording of the Declaration of a Condominium

A declaration is required to have a survey of the land and a graphic description of the improvements.[8] When the developer attempts to record the declaration with a clerk of courts, if the deceleration does not have the required survey of the land and graphic description of the improvements, the developer is required to deliver to the clerk of court a deposit in the amount of

[4] Section 718.104(2), F.S.
[5] *Hyde Park Condominium Association v. Estero Island Real Estate, Inc.*, 486 So. 2d 1, (Fla. 2nd DCA 1986). *See also, Estancia Condominium Association v. Sunfield Homes, Inc.*, 619 So. 2d 1008 (Fla. 2nd DCA 1993), holding that unimproved land that was subject to a recorded declaration of condominium was subject to assessments on that property.
[6] *Winkelman v. Toll*, 661 So. 2d 102 (Fla. 4th DCA 1995),
[7] *R.I.S. Investment Group, Inc. v. Department of Business and Professional Regulation*, 695 So. 2d 357 (Fla. 4th DCA 1997).
[8] Section 718.104(4)(e), F.S.

an estimate of the cost of the final survey or graphic description.[9] The clerk is to hold the sum of money until an amendment to the declaration is recorded that complies with the certificate requirements. Then the sum of money is returned to the developer or to the person presenting the amendment.[10] If the clerk does not pay the sum within 3 years after the date the declaration was originally recorded, the clerk may notify the registered agent of the association that the sum is still available and the reason it was originally deposited.[11]

Amending the Declaration of a Condominium

Section 718.110(10), F.S., provides that if there is an omission or error in a declaration or any other document which would affect the valid existence of the condominium, and if no action is taken to determine whether the declaration or other document complies with the mandatory requirements for the formation of a condominium within 3 years after the date of the recordation of the declaration, the declaration and other documents shall serve as effective enough to create a condominium as of the date the declaration was recorded, whether or not the documents substantially comply with the mandatory requirements of law.

Application of the Interstate Land Sales Full Disclosure Act to Condominium Sales

The federal Interstate Land Sales Full Disclosure Act (ILSFDA or act)[12]provides consumer protections to persons who purchase or lease lots in large, uncompleted housing developments, including condominiums. The act applies to both the conveying of a unit or lot and to all related marketing and sales promotional efforts.

The act specifies the information that the developers must provide to prospective purchasers or lessees. If the developer fails to provide this information, the purchaser or lessee has the right to revoke the purchase contract or lease agreement for two years from the date of the signing of the contract or agreement.[13]

The act permits buyers and lessees to revoke their purchase or lease agreements within a prescribed time if certain conditions are met, including the failure of the developer to make the required disclosures. [14] In relevant part, the developer must provide prospective purchasers or lessees with:

> (1) a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located;[15]

Of concern to condominium developers, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is the application of ILSFDA to the sale, or offering for sale, of pre-construction condominium units.

[9] Section 718.105(4)(a), F.S.
[10] Section 718.105(4)(b), F.S.
[11] Section 718.105(4)(c), F.S.
[12] 15 U.S.C. ss. 1701-20
[13] See 15 U.S.C. s. 1703(d)
[14] See 15 U.S.C. s. 1703
[15] 15 U.S.C. s. 1703(d)(1)

State and federal court decisions have addressed the issue of what is an acceptable description of the property under ILSFDA.

In *Bacolitsas v. 86th & 3rd Owner, LLC*,[16] the United State Court of Appeals for the Second Circuit (New York) held that the description requirement in ISLFDA was satisfied where the purchaser was provided a plan with a detailed description of the unit that identified the dimensions and locations of all rooms and windows, the floor plan, the location of the unit within the building, and the direction the unit faced. The purchaser was also provided a draft declaration that included a metes and bounds description of the condominium and indicated the specific tax lots on which the building was to be erected. The court held that the description itself and not the agreement had to be in a form acceptable for record.

In *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*,[17] the Fourth District Court of Appeals held that the developer had complied with ISLFDA by providing the buyer a copy of the proposed declaration of condominium, which was included in the prospectus, the unit number, address, development name, site map, and floor plans. The court found that this information, which was incorporated into the contract, made the property purchased "clearly identifiable" and "in a form acceptable for recording."

In *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*,[18] the United States District Court for the Middle District of Florida also found that ISLFDA disclosure requirement was not violated when the developer provided a purchase contract that designated the condominium unit and the name of the development. The court held that ISLFDA requirement that the description must be in "recordable form" does not mean that the developer must provide "recording data identifying [the] declaration" as is required by s. 718.109, F.S., i.e., the developer is not required to give the purchaser the identifying reference number when the declaration is recorded.

However, in a recent case, *Berkovich v. Vue-North Carolina, L.L.C.*,[19] the United States District Court for the Western District of North Carolina concluded that the purchasers had the right to revoke the contract because it did not contain a recordable legal description that included the information contained in the filing of the declaration. Consistent with North Carolina law, the developer provided the purchaser with a contract that included a legal description of the unit in which the unit was identified by number and the name of the condominium building as described in the declaration of condominium. However, the description did not include recording data from the filing recording of the declaration because North Carolina law did not permit the declaration to be filed until the construction of the condominium was substantially completed. (Florida law does not prohibit the filing of a declaration before the condominium construction is completed.) Although North Carolina law made it impractical or impossible to provide a description for the unit that included "recording data", the court held that the purchasers were entitled to the "prophylactic measure Congress granted purchasers deprived of a recordable legal description."

[16] *Bacolitsas v. 86th & 3rd Owner, LLC*, 702 F.3d 673 (C.A.2 (N.Y.)) December 19, 2012.
[17] *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, 82 So. 3d 924 (Fla. 4th DCA 2011)
[18] *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, 755 F.Supp.2d 1197 (M.D. Fla. 2009).
[19] *Berkovich v. Vue-North Carolina, L.L.C.*, 2011 WL 5037124 (W.D.N.C. 2011).

Financial Reporting
Section 718.111(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days after the end of the fiscal year (or annually on a date provided in the bylaws), the association must prepare and complete a financial report for the preceding year. Within 21 days after completion, but no later than 120 days after the end of the fiscal year, the association must mail or hand deliver to each unit owner, a copy of the financial report or a notice that it will be mailed or hand delivered.[20] The financial reports must be prepared if approved by a majority of the voting interests present at a properly called meeting of the association, and may be done by one of these methods:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement. [21]

The meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote was taken, except that the approval may also be effective for the following fiscal year.[22]

If turnover of the association from the developer to the unit owners has not occurred, all unit owners including the developer may vote on issues relating to the preparation of financial reports for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the declaration was recorded.[23] Thereafter, only unit owners may vote on such issues until turnover occurs.[24]

Annual Budget Requirement
Section 718.112(2)(f), F.S., requires that the condominium associations bylaws must provide for a proposed annual budget that contains detailed estimates of revenues and expenses and show the amounts budgeted by accounts and expense classifications.

In addition to the annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These requirements do not apply to an adopted budget in which a majority vote of the unit owners determined to waive reserves or provide less reserves than required by law.[25]

Prior to turnover, a developer may vote to waive the reserves or reduce funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the

[20] Section 718.111(13), F.S.
[21] Section 718.111(13)(d), F.S.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] Section 718.112(2)(f)2, F.S.

initial declaration is recorded. Thereafter, only the unit owners may vote on such issues by a majority vote.[26]

Association Powers
Under Section 718.114, F.S., if the declaration allows, an association may enter into agreements for leasehold interests or membership rights and may obtain these benefits for the enjoyment of unit owners even if they are not contiguous to the lands of the condominium. All of these agreements must be fully described in the declaration.

After the 12 months following the recording date of the declaration, agreements acquiring interests are considered a material alteration to the association property, and the association may not acquire or enter into such agreements except by a vote of a majority of the total voting interests or as authorized by the declaration.[27]

Transfer of Association Control
Section 718.301(1), F.S., delineates the process for transfer of association control from the developer to the unit owners. The latest that turnover of control of an association may occur is 7 years after the recording of a declaration when the association will operate a single condominium. In the case of an association that may ultimately operate more than one condominium, the time period is 7 years after the recordation of the declaration for the first condominium that it operates.[28]

After the turnover occurs, the developer must relinquish all control of the association and deliver to the association all property of the unit owners.[29]

Phase Condominiums
Section 718.403, F.S., permits a developer to develop a condominium in phases if the declaration allows, or if an amendment to the original declaration was approved by all of the unit owners. However, the final phase must be completed within 7 years from the date of the recording of the initial declaration.

III. Effect of Proposed Changes:

Section 1. Creation of Condominiums
The bill amends s. 718.104(2), F.S., to clarify that regardless of any requirement or description that a declaration may provide regarding when a condominium is created, condominium units are created when the declaration is recorded. According to the Real Property, Probate, and Trust Law Section of The Florida Bar, this change addresses the conflicting case law regarding whether condominium units are created when a declaration is recorded for condominium that has not been constructed and regarding the extent to which the owners of unconstructed units are subject to assessments on those units. Regardless of any description that a declaration provides, a unit owner can be subject to assessments from the date of recording of the declaration.

[26] *Id*.
[27] Section 718.114, F.S.
[28] Section 718.301(1)(g), F.S.
[29] Section 718.301(4), F.S.

Section 2. Recording of Declaration
The bill amends s. 718.105(4)(c), F.S., to extend to 5 years from 3 years the period of time that the county clerk is required to hold funds deposited by a developer who has not prepared and provided the surveyors certificate of the land which will be a part of the condominium.

Section 3. Amending the Declaration of Condominium
The bill amends s. 718.110(10), F.S., to provide that an action to correct an omission or error in a declaration must be brought within 3 years after the first of these events to occur:

- The recording date of the certificate of a surveyor and mapper, or
- The recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed).

If the action is not brought within the 3-year period, the declaration and other documents would effectively create the condominium on the date the declaration was recorded.

The bill deletes the current requirement that the action be brought within 3 years after the recording of the declaration.

In effect, this provision also permits the developer to provide a prospective condominium unit purchaser with a recorded legal description of the condominium unit at a time before the initial declaration is actually recorded. According to the Real Property, Probate and Trust Law Section of The Florida Bar, this change provides an acceptable legal description of condominium units during the pre-sale period which will comply with the federal Interstate Lands Full Disclosure Act

Section 4. Financial Reporting
The bill amends s. 718.111(13)(d), F.S., to allow the developer and unit owners, when the developer has not turned over control of the association, to vote to waive the financial reporting requirement from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded, or the recording of the first owner's deed, whichever occurs first. The bill deletes the current provision that the two year period begins on the date the declaration was recorded.

Section 5. Annual Budget
The bill amends s. 718.112(2)(f), F.S., to allow the developer to vote to waive or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded, or the recording of the first owner's deed, whichever occurs first. The bill deletes the current provision that the 2-year period begins on the date the initial declaration was recorded.

Section 6. Association Powers
The bill amends s. 718.114, F. S., to provide that the 12 months in which acquiring leaseholds, memberships, or other possessory or use interests is not considered a material alteration begins either on the date of the recording of a certificate of a surveyor and mapper, or the date of the

recording of first owner's deed, whichever occurs first. The bill deletes the current provision that the 12-month period run from the date the initial declaration was recorded.

Section 7. Transfer of Association Control
The bill amends s. 718.301(1)(g), F.S., to change the beginning date for the time periods for the turnover of association control. Instead of commencing on the date the declaration is recorded, the effect periods run from the date of the recording of the certificate of a surveyor and mapper, or the first owner's deed, whichever occurs first.

The bill also creates paragraph 718.301(4)(q), F.S. to require that the developer provide the association a copy of the surveyor and mapper certificate recorded pursuant to s. 718.104(4)(e), F.S., or the recorded instrument that transfers title to a unit that is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

Section 8. Phase Condominiums
The bill amends s. 718.403(1), F.S., so that the period for completion of all phases of a condominium project runs from the date that the surveyor's affidavit of substantial completion is recorded, or 7 years from the date the sale of a unit to a non-developer is recorded in the initial phase of the condominium. The bill deletes the current provision that counted the beginning of the 7-year period from the date the declaration was recorded.

The bill also creates a mechanism to extend the 7-year time period for an additional 3 years, if the unit owners approve the extension during the last 3 years of the 7-year period.[30] The completion of all phases may not exceed 10 years.

An amendment that extends the 7-year period is not subject to the requirements of s. 718.110(4), F.S., which requires the record owner of units and all record owners of liens on the unit to join in the execution of an amendment to the declaration and unless all the record owners of all other units in the same condominium approve the amendment.

Effective Date
The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[30] The approval must be by "not less than two-thirds of the unit owners" which is the same as that required to amend the declaration of condominium under s. 718.110(1)(a), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Developers of condominium will be subject to the cost of recoding the certificate of a surveyor and mapper, or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit (known as the first unit owner deed).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Rules Committee on March 21, 2013
The committee substitute amends s. 718.301(4)(q), F.S., to change the term "occurs" to "occurred."

CS by Regulated Industries on January 24, 2013:
The committee substitute reinstated the current statutory language in s. 718.112(2)(f)2., F.S., which requires the members of a condominium association to determine, by a majority vote at a duly called association meeting, whether to have no budget reserves or budget reserves less than the budget reserves required by statute. These reserves are for the deferred maintenance expense or replacement cost for roof replacement, painting, pavement resurfacing, and similar maintenance issues.

B. Amendments:

None.

460676

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 488
and insert:
favor of the grantee of such unit, whichever occurred first.

By the Committee on Regulated Industries; and Senator Latvala

580-01097A-13 2013120c1

A bill to be entitled

An act relating to condominiums; amending s. 718.104, F.S.; allowing condominium units to come into existence regardless of requirements or restrictions in a declaration; amending s. 718.105, F.S.; extending the amount of time that a clerk may hold a sum of money before notifying the registered agent of an association that the sum is still available and the purpose for which it was deposited; amending s. 718.110, F.S.; changing the requirements relating to the circumstances under which a declaration of condominium or other documents are effective to create a condominium; making technical changes; amending s. 718.111, F.S.; revising the conditions under which unit owners may vote on issues related to the preparation of financial reports; making technical changes; amending s. 718.112, F.S.; revising the conditions under which a developer may vote to waive or reduce the funding of reserves; making technical changes; amending s. 718.114, F.S.; revising the conditions under which a developer may acquire leaseholds, memberships, or other possessory or use interests; making technical changes; amending s. 718.301, F.S.; revising the conditions under which unit owners other than the developer are entitled to elect at least a majority of the members of a board of administration; revising requirements related to the documents that the developer must deliver to the association; making technical changes; amending s.

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580-01097A-13 2013120c1

718.403, F.S.; revising the conditions under which a developer may amend a declaration of condominium governing a phase condominium; providing for an extension of the 7-year period for the completion of a phase; providing requirements for the adoption of an amendment; providing that an amendment adopted pursuant to this section is exempt from other requirements of law; providing an effective date.

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

Section 1. Subsection (2) of section 718.104, Florida Statutes, is amended to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located or any other requirement or description that a declaration may provide. Upon

recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

Section 2. Paragraph (c) of subsection (4) of section 718.105, Florida Statutes, is amended to read:

718.105 Recording of declaration.—

(4)

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) within 5 ~~3~~ years after the date the declaration was originally recorded, the clerk may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the clerk shall disburse the money to the Division of Florida Condominiums, Timeshares, and Mobile Homes for deposit in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

Section 3. Subsection (10) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, and the ~~which~~ omission or error would affect the valid existence of the condominium, the circuit court may ~~has jurisdiction to~~ entertain a petition of one or more of the unit

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

owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, ~~recording of the declaration,~~ the declaration and other documents will effectively ~~shall be effective under this chapter to~~ create a condominium, as of the date the declaration was recorded, regardless of whether ~~whether or not~~ the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

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

Section 4. Paragraph (d) of subsection (13) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared

as follows:

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If ~~With respect to an association to which~~ the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports ~~for the first 2 fiscal years of the association's operation~~, from ~~beginning with~~ the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first ~~declaration is recorded~~. Thereafter, all

unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

Section 5. Paragraph (f) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(f) *Annual budget*.—

1. The proposed annual budget of estimated revenues and expenses must ~~shall~~ be detailed and must ~~shall~~ show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must ~~a schedule attached thereto shall~~ show the amount budgeted for this maintenance ~~amounts budgeted therefor~~. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable,

they need not be listed.

2. In addition to annual operating expenses, the budget must ~~shall~~ include reserve accounts for capital expenditures and deferred maintenance. These accounts must ~~shall~~ include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item that has a ~~for which the~~ deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must ~~shall~~ be computed using ~~by means of~~ a formula ~~which is~~ based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs

first, ~~for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded,~~ after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves ~~as~~ included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may ~~shall~~ be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that ~~which~~ are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or

reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 6. Section 718.114, Florida Statutes, is amended to read:

718.114 Association powers.—An association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether ~~or not~~ the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs

first, are ~~following the recording of the declaration are~~ a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 7. Subsections (1) and (4) of section 718.301, Florida Statutes, are amended to read:

718.301 Transfer of association control; claims of defect by association.—

(1) If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be

operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; ~~recordation of the declaration of condominium;~~ or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first,

~~recordation of the declaration~~ for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first ~~recordation of the declaration creating the initial phase, whichever occurs first~~. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following

items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must ~~shall~~ be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created prior to the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that ~~which~~ have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must ~~shall~~ be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must ~~shall~~ be prepared in accordance with generally accepted accounting principles and must ~~shall~~ be audited in accordance with generally accepted auditing

standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.

(g) A list of the names and addresses~~, of which the~~

~~developer had knowledge at any time in the development of the condominium,~~ of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that ~~which~~ may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year prior to the date the unit owners other than the developer took ~~take~~ control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a

party.

(p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

Section 8. Subsection (1) of section 718.403, Florida Statutes, is amended to read:

718.403 Phase condominiums.—

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original

declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period ~~(which may not exceed 7 years from the date of recording the declaration of condominium)~~ within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(a) All phases must be added to the condominium within 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the 7-year period pursuant to subsection (b) of this section.

(b) An amendment to extend the 7-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to s. 718.110(1)(a). An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.

(c) An amendment must describe the time period within which all phases must be added to the condominium and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers

title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

(d) An amendment that extends the 7-year period pursuant to this section is not subject to the requirements of s. 718.110(4).

Section 9. This act shall take effect upon becoming a law.

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

RECEIVED
MAR 15 2013
SENATE
RULES COMMITTEE

March 13, 2013

The Honorable John Thrasher
Senate Rules Committee
404 S. Monroe St., 402 S
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that my bill, SB 120/Condominiums, be placed on the agenda of the Senate Rules Committee at the earliest possible time. The bill was favorably considered by the Senate Judiciary Committee on March 12.

This bill will clarify when a legal description for a condominium unit is created. An enforceable pre-construction sales contract must contain a legal description of the unit which is difficult to do until the building is nearly complete and accurate dimensions have been determined. The bill will adjust timing provisions in Chapter 718 to accommodate recording of the declarations before completion to create the appropriate legal description without having the unintended consequences of creating "phantom units" in the project.

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: John Phelps, Staff Director

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

APPEARANCE RECORD

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

3/27/13
Meeting Date

Topic _____ Bill Number 120 *(if applicable)*

Name Pete Dunbar Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 215 S Monroe Phone 222-3533
Street

Tallahassee E-mail pete@penningtonlaw.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Real Property Section, Florida Bar

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

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)

3/21/2013
Meeting Date

Topic _____ Bill Number 120 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1096
INTRODUCER:	Education Committee and Senator Montford
SUBJECT:	Repeal of Education Provisions
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Elwell	Hansen	AP	**Favorable**
3.	McLaughlin	Phelps	RC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1096 is a combined effort by the Governor, Legislature, district school superintendents, and other education stakeholders to reduce regulation of public educational institutions. The bill repeals:

- Inactive or underutilized programs, including the Alternative Credit for High School Courses Pilot Project, the High School to Business Career Enhancement Program, Incentives for Urban or Socially and Economically Disadvantaged Area Internships, Centers of Technology Innovation, Dropout Reentry and Mentor Project, Sunshine Workforce Solutions Grants, Florida Minority Medical Education Program, Transition to Teaching Program, School Infrastructure Thrift (SIT) Program, A Business-Community (ABC) School Program, and Effort Index Grants.
- Provisions that are unnecessary or duplicate other law, including State Board of Education review of school district compliance with the Family and School Partnership for Student Achievement Act, certain requirements regarding school-to-work transition and postsecondary and workforce readiness, school district reporting of suspensions and expulsions, provisions requiring alignment of public high school athletic programs with those offered by public postsecondary institutions, certain public postsecondary institution safety

policies, and authority for the Commissioner of Education to grant exceptions to recommendations in educational plant surveys.

- Provisions that are not being implemented or contain outdated or expired statutory authority, including reporting of K-12 Foreign Language Curriculum plans, the Department of Education parent-response center, Florida School for the Deaf and the Blinds authority to create a direct-support organization, high school diploma designations related to high school major areas of interest, high school graduation requirements for students who entered 9th grade before the 2007-08 school year, certain substance abuse training programs, the Florida Teachers Lead Program electronic management system pilot project, provisions relating to reduction of energy consumption by public postsecondary institutions, and exceptions to Special Facilities Construction Account millage contribution requirements granted to three school districts.
- Burdensome, incorrect, or unnecessary reporting requirements relating to K-12 public school recycling efforts, school board family involvement rules, school wellness and physical education policies, and paperwork reduction.

By repealing redundant or unnecessary statutory requirements, the bill creates operational efficiencies and potential cost savings for school districts, higher education institutions, the Department of Education (DOE), and the Board of Governors (BOG) of the State University System.

The bill does not make an appropriation.

The bill takes effect upon becoming law except as otherwise expressly provided in this act.

This bill substantially amends the following sections of the Florida Statutes: 120.81, 250.115, 403.7032, 409.1451, 1001.11, 1002.20, 1002.33, 1002.34, 1002.45, 1003.03, 1003.429, 1003.438, 1003.49, 1004.435(5), 1004.45, 1004.70, 1004.71, 1006.025, 1006.15, 1007.263, 1007.271, 1008.22, 1008.23, 1009.40, 1009.531, 1009.85, 1009.94, 1011.61, 1013.35, 1013.356, 1013.41, 1013.64, 1013.69, and 1013.738.

The bill repeals the following sections of the Florida Statutes: 1001.26(3),1001.435, 1002.23(4), (6), and (9), 1002.32(10), 1002.361, 1002.375, 1003.4285(1), 1003.43, 1003.433(5), 1003.453(2), 1003.496, 1004.05, 1004.62, 1004.77, 1006.02, 1006.035, 1006.051, 1006.09(1)(d), 1006.17, 1006.65, 1006.70, 1007.21, 1007.35(10), 1008.31(3)(d) and (e), 1009.68, 1012.58, 1012.71(6), 1013.231, 1013.32, 1013.42, 1013.72, 1013.502, 1013.721, 1013.64(7), and 1013.73.

II. Present Situation:

The bill is a coordinated effort by the Governor, the Legislature, district school superintendents, and other education stakeholders to reduce regulation of public educational institutions. In October 2012, the Governor selected seven district school superintendents to formulate recommendations for eliminating unnecessary or outdated statutes and State Board of Education rules. The DOE distributed a statewide survey soliciting recommendations from the remaining

60 superintendents. The statutes proposed for repeal by this bill are the product of these combined efforts.[1]

III. Effect of Proposed Changes:

Recycling

Legislation enacted in 2010 required, among others, each state agency, local government, and K-12 public school, public institution of higher learning, community college, and state university to annually report all recycled materials to the appropriate county.[2] The Department of Environmental Protection was directed to designate a reporting format, but has not done so.[3] Thus, reporting by public sector entities has not yet commenced.

The bill amends s. 403.7032(3), F.S., eliminating the recycling reporting requirement for K-12 public schools, as requested by school district superintendents.[4]

K-12 Foreign Language Curriculum Plan Submittal

Legislation enacted in 2002 required each district school board to develop a K-12 foreign language curriculum plan to be submitted to the Commissioner of Education by June 30, 2004.[5] Kindergarten through grade twelve foreign language curriculum plans were submitted to the commissioner in 2004 and subsequently implemented by school districts.

The bill repeals s. 1001.435, F.S., relating to the K-12 foreign language curriculum, as the purpose of this statute has been accomplished.

Family and School Partnership for Student Achievement Act

Enacted in 2003, the Family and School Partnership for Student Achievement Act established several requirements designed to strengthen collaboration among parents and school personnel.[6] Among other things, the Act requires the DOE to establish a parent-response center; annual submission of family involvement rules by school boards to the DOE; and an annual State Board of Education review of school districts' compliance.[7] The parent-response center does not exist, as the DOE uses other means to assist parents and the public.[8] The DOE simply acknowledges receipt of school board family involvement rules, but does nothing further. State board review of school board compliance with the Act duplicates another law which provides the Commissioner

[1] Press Release, Florida Department of Education, *Superintendents Recommend Ways to Reduce Red Tape, Regulations* (Nov. 5, 2012), http://www.fldoe.org/news/2012/2012_11_05-2.asp (last visited Jan. 8, 2013). The superintendents of Bay County, Broward County, Charlotte County, Highlands County, Orange County, St. Johns County, and Volusia County school districts participated on the governor's panel.
[2] Section 3, ch. 2010-143, L.O.F., *codified at* s. 403.7032(3), F.S.
[3] Telephone conversation, Board of Governors, State University System of Florida, Staff (Dec. 20, 2012).
[4] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[5] Section 1061, ch. 2002-387, L.O.F., *codified at* s. 1001.435, F.S.
[6] Section 2, ch. 2003-118, L.O.F., *codified at* s. 1002.23, F.S.
[7] Section 1002.23(4), (6), and (9), F.S.
[8] Telephone conversation, Florida Department of Education, Bureau of Family and Community Outreach (December 18, 2012).

of Education with the authority to investigate school board noncompliance with state law and the State Board of Education with the authority to withhold funds for such noncompliance.[9]

The bill repeals subsections (4), (6), and (9) of s. 1002.23, F.S., relating to the parent-response center, school board reporting of parent involvement rules, and state board review of compliance with the Act, respectively. The DOE and district school superintendents concur with these repeals.

Florida School for the Deaf and the Blind Direct-Support Organization

Legislation enacted in 2004 authorized the Florida School for the Deaf and the Blind (FSDB) board to establish a direct support organization (DSO). The DSO may receive, hold, invest, and administer property and make expenditures to or for the benefit of FSDB or the board.[10]

The bill repeals s. 1002.361, F.S., relating to a DSO for the FSDB, as no DSO exists and the FSDB has no future intent to create one. The FSDB concurs with repeal of this statute.

Alternative Credit for High School Courses Pilot Project

Legislation enacted in 2008 established the Alternative Credit for High School Courses Pilot Project to enable high school students enrolled in industry certification courses to simultaneously earn credit in Algebra, Geometry, or Biology without having to enroll in a separate course.[11] In order to earn such credit, students were required to pass an end-of-course (EOC) assessment. The legislation required the Commissioner of Education to select up to three school districts to participate in the pilot project, beginning in the 2008-09 school year, and authorized the DOE to approve eligible courses and EOC assessments.[12] Only one high school participated in the pilot project and no eligible students sought credit through the pilot program.[13]

The bill repeals s. 1002.375, F.S., relating to the Alternative Credit for High School Courses Pilot Project, which is no longer in existence, and has been made unnecessary by the Legislature's enactment of the Credit Acceleration Program (CAP) in 2010. Similar to the pilot project, CAP enables students to earn credit in courses tested by a statewide standardized EOC assessment without enrolling in the course. The bill also amends s. 1011.61, F.S., which is a conforming provision. The DOE and district school superintendents concur with repeal of this statute.[14]

[9] *See* s. 1008.32, F.S.
[10] Section 6, ch. 2004-331, L.O.F, *codified at* s. 1002.361, F.S.
[11] Section 1, ch. 2008-174, L.O.F., *codified at* s. 1002.375, F.S.
[12] Section 1002.375(1), (2), and (4), F.S. The law authorizes use of a statewide standardized EOC assessment or EOC assessment developed by the Florida Virtual School for assessing student mastery of Algebra, Geometry, or Biology. Section 1002.375(4), F.S.
[13] Florida Department of Education, *Legislative Bill Analysis for HB 4185* (2011).
[14] Florida Department of Education, *Legislative Report on Alternative Credit for High School Courses Pilot*, (2010).(on file with the Senate Committee on Education); Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012); *see* s. 5, ch. 2010-22, L.O.F., *codified at* s. 1003.4295(3), F.S.

Standard High School Diploma Designations

Legislation enacted in 2006 required high school students to select a major area of interest comprised of four credits in a career, academic, or fine or performing arts content area, in order to earn a standard high school diploma.[15] Legislation enacted in 2008 created a standard high school diploma designation signifying the student's completion of a major.[16] Legislation enacted in 2010 repealed the major area of interest graduation requirement, but did not eliminate the diploma designation.[17]

The bill repeals s. 1003.4285(1), F.S., relating to the major area of interest diploma designation, which is now obsolete due to the repeal of the corresponding graduation requirement.

General Requirements for High School Graduation

Since 2006, Florida has had two laws concerning high school graduation requirements. Section 1003.43, F.S., was enacted in 1978 and applies to students who entered 9th grade before the 2007-08 school year; s. 1003.428, F.S., applies to students entering the 9th grade in the 2007-08 school year and thereafter.[18] Six school years have passed since entering 9th graders have been subject to s. 1003.43, F.S.

The bill repeals s. 1003.43, F.S., relating to the general requirements for high school graduation for students entering 9th grade before the 2007-08 school year. Despite repeal, these requirements will remain applicable to any students still enrolled in Florida public schools who were subject to them at the time they entered 9th grade.[19] The DOE and district school superintendents concur with repeal of this statute.[20]

School Wellness and Physical Education Policies

Legislation enacted in 2006 required each school district to provide the most recent version of its school wellness and physical education policy on its website. The DOE was required to post on its website links to these policies.[21]

School wellness policies are required by federal law governing child nutrition programs. Legislation enacted in 2011 transferred oversight of federal child nutrition programs from the DOE to the Department of Agriculture and Consumer Services (DACS).[22] Accordingly, the

[15] Section 23, ch. 2006-74, L.O.F., *codified at* s. 1003.428(2)(b)1., F.S.
[16] Section 8, ch. 2008-235, L.O.F., *codified at* s. 1003.4285(1), F.S.
[17] Section 3, ch. 2010-22, L.O.F.
[18] Chapter 78-424, L.O.F., *initially codified at* s. 232.246, F.S., *redesignated in* 2002 as s. 1003.43, F.S., and s. 23, ch. 2006-74, L.O.F., *codified as* s. 1003.428, F.S.
[19] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So. 2d 438 (Fla. 2001). The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively.
[20] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[21] Section 18, ch. 2006-301, L.O.F., codified at s. 1003.453(2), F.S.
[22] *See* Healthy, Hunger Free Kids Act of 2010, Pub. L. No.111-296, 124 Stat. 3183; s. 8, ch. 2011-217, L.O.F.; Florida Department of Agriculture and Consumer Services, *Wellness*, http://www.freshforfloridakids.com/Sponsors/Programs/Wellness.aspx (last visited Jan. 7, 2013)(*see* Florida Links to Local Wellness Policies).

DACS, not the DOE, posts school wellness policies on its website. However, the law was never changed to reflect this.

The DOE website includes a page devoted entirely to physical education.[23] The webpage includes online links to school district physical education policies and numerous additional resources. Posting of physical education policies is the only resource that is statutorily required.[24]

The bill repeals s. 1003.453(2), F.S., relating to online posting of school wellness and physical education policies, thereby removing the outdated requirement that the DOE post links to school wellness policies on its website. The DOE and district school superintendents requested repeal of this outdated and unnecessary reporting requirement.[25]

High School to Business Career Enhancement Program

Legislation enacted in 2007 established the High School to Business Career Enhancement Program, which authorizes school boards to adopt policies for providing high school students internships with local employers.[26] Among other things, participating students must earn at least a 2.0 GPA, internships must be between 8 and 20 consecutive weeks in duration, and participants are limited to 20 work hours weekly and one internship annually.[27] No school districts have participated in this program in recent years.

The bill repeals s. 1003.496, F.S., relating to the High School to Business Career Enhancement Program, as the program is not currently being implemented by school districts.

Substance Abuse Training Programs

Legislation enacted in 1993 authorized state universities and the Florida College System (FCS) institutions to develop courses designed to train public school teachers, counselors, physicians, law enforcement personnel, and other professionals in recognizing symptoms of substance abuse impairment.[28] These programs are inactive and unfunded.

The bill repeals s. 1004.05, F.S., which created the Substance Abuse Training Programs. The DOE and the BOG concur with the repeal of this statute.[29]

Incentives for Urban or Socially and Economically Disadvantaged Area Internships

Legislation enacted in 1994 established the Incentives for Urban or Socially and Economically Disadvantaged Area Internships program to give university students the opportunity to study the social, economic, educational, and political life of inner cities and economically disadvantaged

[23] *See*, Florida Department of Education, *Physical Education*, http://www.fldoe.org/BII/CSHP/Education/Physical_Ed/default.asp (last visited Jan. 7, 2013) (*see* Links to Florida School District's Physical Education Policies); *see* ss. 1003.453 and 1003.455, F.S.
[24] *Id*.
[25] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[26] Section 1, ch. 2007-122, L.O.F., *codified at* s. 1003.496, F.S.
[27] Section 1003.496(2), F.S.
[28] Section 12, ch. 93-39, L.O.F., *initially codified at* s. 240.70, F.S., *redesignated in* 2002 as s. 1004.05, F.S.
[29] Telephone conversation, Board of Governors, State University System of Florida, Staff (Dec. 11, 2012).

areas of the state.[30] This program is not currently being implemented and has not received funding since FY 1999-2000.

The bill repeals s. 1004.62, F.S., relating to Incentives for Urban or Socially and Economically Disadvantaged Area Internships. The BOG concurs with the repeal of this inactive program.[31]

Centers of Technology Innovation

Legislation enacted in 1994 authorized individual FCS institutions, consortia of multiple FCS institutions, or consortia of FCS institutions and other educational institutions to establish centers of technology innovation.[32] These centers were authorized to perform various functions, including curriculum and faculty development; research, testing, and technology transfer; instructional materials development; and the formation of partnerships with technology industries seeking to update or expand existing technology.[33] According to the DOE, no such centers exist.[34]

The bill repeals s. 1004.77, F.S., relating to Centers of Technology Innovation, as the program is inactive. The DOE concurs with repeal of this statute.[35]

Provision of Information to Students and Parents Regarding School-to-Work Transition

Legislation enacted in 1994 required, among other things, each K-12 public school to document actions taken to prepare students for the workforce. Each public high school was required to assess each student's preparation for employment before graduation and provide the student and the student's parent with the results of the assessment.[36]

Subsequent legislation has increased the state's focus on workforce preparation. Among other things, each school district, in collaboration with the local workforce board and public postsecondary institutions serving the district, must develop a 3-year strategic plan for identifying high-demand career fields and creating career academies in those fields, recruiting students to enroll in career academies; providing personalized student advisement with parent participation, supporting education planning, and coordinating middle school and high school career education programs.[37] Additionally, middle school students must complete a career and education planning course which results in completion of an academic and career plan for the student.[38]

The bill repeals s. 1006.02, F.S., relating to Provision of Information to Students and Parents Regarding School-to-Work Transition and amends s. 1006.025, F.S. which is a conforming

[30] Section 38, ch. 94-230, L.O.F., *initially codified at* s. 240.701, F.S., *redesignated in* 2002 as s. 1004.62, F.S.
[31] Email, Board of Governors, State University System of Florida, General Counsel (Dec. 20, 2012).
[32] Section 39, ch. 94-230, L.O.F., *initially codified at* s. 240.3335, F.S., *redesignated in* 2002 as s. 1004.77, F.S.
[33] Section 1004.77(2), F.S.
[34] Telephone conversation, Division of Florida Colleges, Staff (Jan. 5, 2013).
[35] *Id.*
[36] Section 5, ch. 94-319, L.O.F., *initially codified at* s. 229.595, F.S., *redesignated in* 2002 as s. 1006.02, F.S.
[37] Section 1003.491(3), F.S.; *see e.g.* s. 1, ch. 2007-216 and s. 13, ch. 2012-191, L.O.F.
[38] Section 1003.4156(1)(a)5., F.S.; s. 21, ch. 2006-74, L.O.F.

provision. These requirements have been supplanted by other provisions governing workforce preparation and education planning.[39]

Dropout Reentry and Mentor Project

Legislation enacted in 1990 created the Dropout Reentry and Mentoring Project, a pilot project to be implemented by the Florida Agricultural and Mechanical University National Alumni Association in Tallahassee, Jacksonville, Daytona Beach, and Miami.[40] The project assisted 15 African American students in each of these four locations who had dropped out of high school for reasons unrelated to academic difficulty. Participants received mentoring; academic evaluation for, and enrollment in, a regular high school, General Educational Development (GED) program, career center, or alternative school; and instruction regarding test-taking, study, goal setting, conflict management, and time management skills.[41] This project is no longer operational and has received no funding in over 10 years.

The bill repeals s. 1006.035, F.S., which created the Dropout Reentry and Mentor Project. The Florida Agricultural and Mechanical University and district school superintendents concur with repeal of this statute.

Sunshine Workforce Solutions Grant Program

Legislation enacted in 2002 created the Sunshine Workforce Solutions Grant Program, to provide school districts with grants for establishing nursing-themed middle school and high school career education programs.[42] The program was never implemented or funded.

The bill repeals s. 1006.051, F.S., which created the Sunshine Workforce Solutions Grant Program. The DOE and district school superintendents concur with repeal of this statute.[43]

Duties of School Principal relating to Student Discipline and School Safety

Section 1006.09(1)(d), F.S., requires each school principal (or designee) to include an analysis of suspensions and expulsions in the annual report of school progress. Subsection (6) of s. 1006.09, F.S., requires each school principal to report data concerning school safety and discipline to the DOE.[44] The discipline data reported to DOE includes information regarding suspensions and expulsions. Thus, these two provisions are redundant.[45]
The bill repeals s. 1006.09(1)(d), F.S., relating to duties of school principals for student discipline and school safety, as the information reported under this paragraph duplicates that reported under s. 1006.09(6), F.S. DOE and district school superintendents concur with repeal of this statute.[46]

[39] Telephone conversation, Board of Governors, State University System of Florida, Staff (Dec. 11, 2012).
[40] Section 11, ch. 90-365, L.O.F., *initially codified at* s. 228.503, F.S., *redesignated in* 2002 as s. 1006.035, F.S.
[41] Section 1006.035(2), (5), and (7), F.S.
[42] Section 4, ch. 2002-230, L.O.F., *codified at* s. 1006.051, F.S.
[43] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[44] Section 279, ch. 2002-387, L.O.F., *codified at* s. 1006.09(1)(d) and (6), F.S.
[45] Telephone conversation, Florida Department of Education, Staff, (Dec. 11, 2012).
[46] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).

Sponsorship of Athletic Activities

Two substantially identical statutes enacted in 1986 required public high schools, FCS institutions, and state universities to align their sports offerings to enable opportunities for students to play sports for which collegiate scholarships are offered.[47] The law was specifically enacted in order to induce public schools to transition from slow pitch softball to fast pitch softball.[48]

The bill repeals ss. 1006.17 and 1006.70, F.S., relating to sponsorship of athletic activities similar to those for which scholarships offered. Fast-pitch softball is the version of softball currently sponsored by the Florida High School Athletic Association (FHSAA), the Florida College System Athletic Association (FCSAA), and the National Collegiate Athletic Association.[49] The FHSAA and the FCSAA concur with these repeals.[50]

Safety Issues in Courses Offered by Public Postsecondary Educational Institutions

Legislation enacted in 2002 required the State Board of Education and the BOG to adopt policies for protecting the health and safety of students, instructional personnel, and visitors who participate in courses offered by the FCS institutions or state universities, respectively.[51]

According to the DOE, these safety policies are already required by federal law and accrediting bodies and included in affiliation contracts with hospitals and law enforcement agencies.[52]

The bill repeals s. 1006.65, F.S, relating to safety issues in courses offered by public postsecondary institutions. The DOE concurs with repeal of this statute.

Readiness for Postsecondary Education and the Workplace

Legislation enacted in 1997 required that entering 9th graders and their parents develop a four to five year academic and career plan while the student is in middle school, based upon the student's postsecondary and career goals.[53] Legislation enacted subsequently required middle school students to complete a career and education planning course which results in completion of an academic and career plan for the student.[54]

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[47] Section 4, ch. 86-172, L.O.F., *initially codified at* s. 232.426, F.S., *redesignated in* 2002 as ss. 1006.17 and 1006.70, F.S.
[48] Florida House of Representatives, *Legislative Bill Analysis for CS/HB 90(*1986*).*
[49] Florida High School Athletic Association, *Sports and Programs*, http://www.fhsaa.org/sports (last visited Jan. 8, 2013); Florida College System Activities Association, *Athletics*, http://www.thefcsaa.com/ (last visited Jan. 8, 2013); National Collegiate Athletic Association, *Championships List*, http://www.ncaa.org/wps/wcm/connect/public/ncaa/championships/championships+list (last visited Jan. 8, 2013).
[50] Florida Department of Education, *Legislative Bill Analysis for HB 4041* (2012).
[51] Section 335, ch. 2002-387, L.O.F., *codified at* s. 1006.65, F.S.
[52] Email, Board of Governors, State University System of Florida (Dec. 20, 2012); *see* 20 U.S.C. s. 1092(f), requiring disclosure of campus security policies and crime statistics by postsecondary institutions participating federal financial aid programs.
[53] Section 1, ch. 97-21, L.O.F., *initially codified at* s. 232.2451, F.S., *redesignated in* 2002 as s. 1007.21, F.S.
[54] Section 1003.4156(1)(a)5., F.S.; s. 21, ch. 2006-74, L.O.F.

The bill repeals s. 1007.21, F.S., relating to readiness for postsecondary education and the workplace, as this provision is duplicative. The DOE and district school superintendents concur with repeal of this statute.[55]

Paperwork Reduction

Legislation enacted in 2010 required the Commissioner of Education to annually monitor and review paperwork, data collection, and reporting requirements and report recommendations for eliminating or consolidating such requirements to school districts.[56] Although this provision is intended to reduce paperwork, it actually creates more paperwork for DOE and school districts.[57]

The bill repeals s. 1008.31(3)(d) and (e), F.S., relating to paperwork reduction. The DOE and school district superintendents concur with repeal of these provisions.[58]

Florida Minority Medical Education Program

Legislation enacted in 1991 established a scholarship program for minority students pursuing medical education at the University of Florida, the University of South Florida, Florida State University, and the University of Miami, or Southeastern University Health Sciences, for the purpose of addressing the primary health care needs of underserved groups.[59] According to the DOE, the program has not been funded in 15 years.[60]

The bill repeals s. 1009.68, F.S., relating to the Florida minority medical education program. The DOE concurs with repeal of this statute.[61]

Transition to Teaching Program

Legislation enacted in 2001 created the Transition to Teaching Program to award grants for establishing programs to facilitate the transition of midcareer professionals into the teaching profession.[62] An individual participating in programs created under the grant was eligible for financial assistance, upon condition that he or she commit to teach in a Florida school district for at least three years. The award of grants was contingent upon legislative funding. The DOE was awarded federal Transition to Teaching grants in 2003 and 2007. However, these grants expired in October 2011.

The bill repeals s. 1012.58, F.S. creating the Transition to Teaching Program, which is inactive and no longer funded. The DOE concurs with the repeal of this statute.

[55] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[56] Section 199, ch. 2010-102, L.O.F., *codified at* s. 1008.31(3)(d)-(e), F.S.
[57] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012)
[58] *Id.*
[59] Section 1, ch. 91-203, L.O.F., *initially codified at* s. 240.4987, F.S., *redesignated in* 2002 as s. 1009.68, F.S.
[60] Telephone conversation, Florida Department of Education, Staff (Jan. 15, 2013).
[61] *Id.*
[62] Sections 1 and 2, ch. 2001-219, L.O.F., *initially codified at* s. 229.604, F.S., *redesignated in* 2002 as s. 1012.58, F.S.

The Florida Teachers Lead Program

The Florida Teachers Lead program provides a classroom materials and supplies stipend to each public school classroom teacher.[63] Legislation enacted in 2009, authorized the DOE to establish a pilot program to study the feasibility of creating a centralized electronic system for managing Florida Teachers Lead Program disbursements. The program was authorized only for FY 2009-10. School district participation was voluntary and the DOE was not required to implement the program if school district participation was insufficient to measure the viability of an electronic management system.[64] According to the DOE, no school districts agreed to participate and the program was never implemented.[65]

The bill repeals s. 1012.71(6), F.S., relating to the Florida Teachers Lead Program centralized electronic management system pilot program, as authority for the program has expired.

Florida College System Institution and University Energy Consumption

Legislation enacted in 2010 required each FCS institution and state university to strive to reduce campus-wide energy consumption by ten percent and submit a report to the Governor, Speaker of the House of Representatives, and President of the Senate by January 1, 2011, describing how this goal was met or providing a plan for meeting the goal in the future.[66] While this statute requires a plan, it does not require that the institutions actually meet this goal. Furthermore, the report submission deadline of January 1, 2011, has passed.[67]

The bill repeals s. 1013.231, F.S., relating to reduction in energy consumption by the FCS institutions and universities, as the purpose of this statute has been served.

Exception to Recommendations in Educational Plant Survey

Legislation enacted in 1977 authorized school districts to request exceptions to recommendations made in an educational plant survey based upon potential cost savings or other educational benefits. These exceptions must be approved by the Commissioner of Education.[68] A separate provision of law similarly authorizes the commissioner to waive survey requirements upon school district request.[69]

The bill repeals s. 1013.32, F.S., relating to exceptions to recommendations in educational plant surveys. The DOE concurs with repeal of this statute.[70]

[63] Section 1012.71, F.S.
[64] *Id*.
[65] Section 37, ch. 2009-59, L.O.F., *codified at* s. 1012.71(6), F.S.
[66] Section 30, ch. 2010-155, L.O.F., *codified at* s. 1013.321, F.S.
[67] Section. 1013.231, F.S.
[68] Section 9, ch. 77-458, L.O.F., *initially codified at* s. 235.155, F.S., *redesignated in* 2002 as s. 1013.32, F.S.
[69] Section 1013.03(10), F.S.
[70] Telephone conversation, Florida Department of Education, Staff (Dec. 11, 2012).

School Infrastructure Thrift Program

Legislation enacted in 1997 established the School Infrastructure Thrift (SIT) program, which was designed to reward school districts that achieved construction cost savings.[71] Among other things, the legislation required the DOE to identify for elimination obsolete, excessively restrictive, and unnecessary education facilities regulations and practices.[72] School districts that achieved reduced costs per student station specified in statute were eligible to apply for SIT program awards.[73] The SIT program has not been funded since FY 2004-05, when funding was awarded to the Orange and Osceola County school districts.[74] A related program, the SMART Schools Clearinghouse, was repealed in 2010.[75]

The bill repeals ss. 1013.42 and 1013.72, F.S., relating to the SIT program. DOE concurs with these repeals.

A Business-Community School Program

The A Business-Community (ABC) School Program encourages the formation of business and education partnership schools which operate in facilities owned or operated by a local business.[76] The ABC schools may serve students in kindergarten through 3rd grade. Children of employees of the business must be given first preference for enrollment.[77] School districts are not required to establish an ABC school, nor do they need statutory authority to do so.

The bill repeals ss. 1013.502 and 1013.721, F.S., relating to the ABC School Program. School district superintendents concur with these repeals.[78]

Exceptions to Special Facilities Construction Account requirements

The Special Facility Construction Account (SFCA) provides funding to school districts with urgent construction needs that cannot be met by existing resources or resources anticipated in the next three year period.[79] In addition to other provisions, school districts receiving SFCA funding must levy the maximum authorized discretionary millage for capital outlay (1.5 mills), or its equivalent from the school capital outlay surtax.[80] Legislation enacted in 2009 reduced this millage contribution for the school districts of Wakulla county (1 mill for FY 2009-10 and .5 mill for FY 2010-11), Liberty county (1 mill for FYs 2009-10 to 2011-12), and Calhoun county (1.125 mills for FYs 2009-10 to 2012-13).[81] This provision will be obsolete as of June 30, 2013,

[71] Section 22 ch. 97-153, L.O.F., *initially codified at* s. 235.2155, F.S., *redesignated in* 2002 as s. 1013.42, F.S.; Section 23, ch. 97-153, L.O.F., *initially codified at* s. 235.216, F.S., *redesignated in* 2002 as s. 1013.72, F.S.
[72] Section 1013.42(2), F.S.
[73] Section 1013.72(2), F.S.
[74] Telephone conversation, Florida Department of Education, Staff (Dec. 11, 2012).
[75] Chapter 2010-70, L.O.F.
[76] Section 21, ch. 2003-391, L.O.F., *initially codified at* s. 1013.501, F.S., *redesignated in* 2006 as s. 1013.721, F.S. Initially known as the Florida Business and Education in School Together (Florida BEST) Program, the name of the program was changed to the ABC Schools Program in 2006.
[77] Section 1013.721(2) and (5)(a), F.S.
[78] Florida Department of Education, *School District Superintendent Deregulation Survey* (Oct. 25, 2012).
[79] Section 1013.64(2)(a), F.S.
[80] Section 1013.64(2)(a)8., F.S.; *see* s. 1011.71(2), F.S.
[81] Section 40, ch. 2009-59, L.O.F., *codified at* s. 1013.64(7), F.S.

when Calhoun County's exception expires. Wakulla County's exception expired June 30, 2011, and Liberty County's exception expired June 30, 2012.

The bill repeals s. 1013.64(7), F.S., relating to exceptions to SFCA millage contribution requirements, as the last exception expires June 30, 2013 rendering the provision obsolete. The DOE concurs with repeal of this provision.[82]

Effort Index Grants

Legislation enacted in 1997 provided grants to school districts which met a specified level of local effort funding, but still had a need for new student stations or core facilities to meet student demand.[83] The legislation provided a one-time appropriation of $300 million for the grants, the last of which was disbursed in 2008.[84] A related program, the SMART Schools Clearinghouse, was repealed in 2010.[85]

The bill repeals s. 1013.73(7), F.S., relating to effort index grants, which are no longer funded. The DOE concurs with the repeal of this statute.

Rulemaking Authority

- The DOE states that the rulemaking authority of ss. 1001.26(3), 1002.32(10), 1007.35(10), and 1009.85, F.S. is unnecessary because the statutes are self-executing.86
- The DOE further states that s. 1003.433(5), F.S., is unnecessary due to duplicative statutory authority.87
- The BOG states that the rulemaking authority of s. 1004.435(5)(c) and (d), F.S., is unnecessary and no rules have been created.88
- Florida State University states that the rulemaking authority of s. 1004.45(2)(g), F.S. is unnecessary because the property in question belongs to the Ringling estate and not to the university.89
- The bill repeals the rulemaking authority in these statutes previously identified as duplicative, redundant, or unused pursuant to s. 11.242(5)(j), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[82] *Id.*
[83] Section 5, ch. 97-384, L.O.F., *initially codified at* s. 235.186, F.S., *redesignated in* 2002 as s. 1013.73, F.S.
[84] Section 870, ch. 2002-387, L.O.F.
[85] Chapter 2010-70, L.O.F.
[86] Telephone conversation, Florida Department of Education, Staff (Dec. 18, 2012).
[87] *Id.*
[88] Telephone conversation, Board of Governors, State University System of Florida (Dec. 20, 2012).
[89] Telephone conversation, Florida State University, Office of General Counsel (December 18, 2012).

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:

By repealing redundant or unnecessary statutory requirements, the bill creates operational efficiencies and potential cost savings for school districts, higher education institutions, the DOE, and the BOG.

The bill does not make an appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Education Committee on March 6, 2013:
The committee substitute retains the original provisions of SB 1096 and:

- Repeals s. 1002.375, F.S., relating to the Alternative Credit for High School Courses Pilot Project, s. 1006.02, F. S., relating to the provision of information to students and parents regarding school-to-work transition, s. 1006.051, F.S., relating to the Sunshine Workforce Solutions Grant Program, and the rulemaking authority in ss. 1001.26(3), 1002.32(10), 1003.433(5), 1004.435(5)(c) and (d), 1004.45(2)(g), 1007.35(10), and 1009.85 of the Florida Statutes.
- Amends s. 1006.025, F.S., which is a conforming provision for s. 1006.02, F.S., and s. 1011.61, F.S., which is a conforming provision for s. 1002.375, F.S.

- Amends s. 1013.64(7), F.S., providing for an effective date that corresponds with the exception granted to Calhoun County.

B. Amendments:

None.

By the Committee on Education; and Senator Montford

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A bill to be entitled

An act relating to the repeal of education provisions; amending s. 403.7032, F.S.; removing a requirement that each K-12 public school annually report to the county on recycled materials; repealing s. 1001.26(3), F.S.; removing duplicative, redundant, or unused rulemaking authority; repealing s. 1001.435, F.S., relating to a K-12 foreign language curriculum plan; repealing s. 1002.23(4), (6), and (9), F.S., relating to a parent-response center, submission of family involvement and empowerment rules by district school boards, and State Board of Education compliance review and enforcement under the Family and School Partnership for Student Achievement Act; repealing s. 1002.32(10), F.S.; removing duplicative, redundant, or unused rulemaking authority; repealing s. 1002.361, F.S., relating to a direct-support organization for the Florida School for the Deaf and the Blind; repealing s. 1002.375, F.S., relating to a pilot project to award alternative credit for high school courses; repealing s. 1003.4285(1), F.S., relating to a standard high school diploma designation that indicates a student's major area of interest; repealing s. 1003.43, F.S., relating to general requirements for high school graduation; repealing s. 1003.433(5), F.S.; removing duplicative, redundant, or unused rulemaking authority; repealing s. 1003.453(2), F.S., relating to information on school wellness and physical education policies posted on Department of

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Education and school district websites; repealing s. 1003.496, F.S., relating to the High School to Business Career Enhancement Program; repealing s. 1004.05, F.S., relating to substance abuse training programs for specified public school personnel; amending s. 1004.435, F.S.; removing duplicative, redundant, or unused rulemaking authority; amending s. 1004.45, F.S.; removing unnecessary rulemaking authority; repealing s. 1004.62, F.S., relating to incentives for state university student internships to study urban or socially and economically disadvantaged areas; repealing s. 1004.77, F.S., relating to centers of technology innovation; repealing s. 1006.02, F.S., relating to provision of information to students and parents regarding school-to-work transition; repealing s. 1006.035, F.S., relating to a dropout reentry and mentor project; repealing s. 1006.051, F.S., relating to the Sunshine Workforce Solutions Grant Program; repealing s. 1006.09(1)(d), F.S., relating to duties of school principals with respect to annual reporting and analysis of student suspensions and expulsions; repealing ss. 1006.17 and 1006.70, F.S., relating to sponsorship of athletic activities similar to those for which scholarships are offered; repealing s. 1006.65, F.S., relating to safety issues in courses offered by public postsecondary educational institutions; repealing s. 1007.21, F.S., relating to readiness for postsecondary education and the workplace; repealing s. 1007.35(10), F.S.; removing

duplicative, redundant, or unused rulemaking authority; repealing s. 1008.31(3)(d) and (e), F.S., relating to review and reporting duties of the Commissioner of Education with respect to consolidating paperwork under Florida's K-20 education performance accountability system; repealing s. 1009.68, F.S., relating to the Florida Minority Medical Education Program; amending s. 1009.85, F.S.; removing duplicative, redundant, or unused rulemaking authority; repealing s. 1012.58, F.S., relating to the Transition to Teaching Program; repealing s. 1012.71(6), F.S., relating to a pilot program for establishing an electronic management system for the Florida Teachers Lead Program; repealing s. 1013.231, F.S., relating to Florida College System institution and state university energy consumption reduction; repealing s. 1013.32, F.S., relating to exceptions to recommendations in educational plant surveys; repealing ss. 1013.42 and 1013.72, F.S., relating to the School Infrastructure Thrift (SIT) Program; repealing ss. 1013.502 and 1013.721, F.S., relating to A Business-Community (ABC) School Program; repealing s. 1013.64(7), F.S., relating to exceptions from Special Facility Construction Account requirements; repealing s. 1013.73, F.S., relating to effort index grants for school district facilities; amending ss. 120.81, 250.115, 409.1451, 1001.11, 1002.20, 1002.33, 1002.34, 1002.45, 1003.03, 1003.429, 1003.438, 1003.49, 1004.70, 1004.71, 1006.025, 1006.15,

1007.263, 1007.271, 1008.22, 1008.23, 1009.40, 1009.531, 1009.94, 1011.61, 1013.35, 1013.356, 1013.41, 1013.64, 1013.69, and 1013.738, F.S.; conforming provisions; providing effective dates.

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

Section 1. Subsection (3) of section 403.7032, Florida Statutes, is amended to read:

403.7032 Recycling.—

(3) Each state agency, ~~K-12 public school,~~ public institution of higher learning, community college, and state university, including all buildings that are occupied by municipal, county, or state employees and entities occupying buildings managed by the Department of Management Services, must, at a minimum, annually report all recycled materials to the county using the department's designated reporting format. Private businesses, other than certified recovered materials dealers, that recycle paper, metals, glass, plastics, textiles, rubber materials, and mulch, are encouraged to report the amount of materials they recycle to the county annually beginning January 1, 2011, using the department's designated reporting format. Using the information provided, the department shall recognize those private businesses that demonstrate outstanding recycling efforts. Notwithstanding any other provision of state or county law, private businesses, other than certified recovered materials dealers, shall not be required to report recycling rates. Cities with less than a population of 2,500 and per capita taxable value less than $48,000 and cities with a per

capita taxable value less than $30,000 are exempt from the reporting requirement specified in this subsection.

Section 2. Subsection (3) of section 1001.26, Florida Statutes, is repealed.

Section 3. Section 1001.435, Florida Statutes, is repealed.

Section 4. Subsections (4), (6), and (9) of section 1002.23, Florida Statutes, are repealed.

Section 5. Subsection (10) of section 1002.32, Florida Statutes, is repealed.

Section 6. Section 1002.361, Florida Statutes, is repealed.

Section 7. Section 1002.375, Florida Statutes, is repealed.

Section 8. Subsection (1) of section 1003.4285, Florida Statutes, is repealed.

Section 9. Section 1003.43, Florida Statutes, is repealed.

Section 10. Subsection (5) of section 1003.433, Florida Statutes, is repealed.

Section 11. Subsection (2) of section 1003.453, Florida Statutes, is repealed.

Section 12. Section 1003.496, Florida Statutes, is repealed.

Section 13. Section 1004.05, Florida Statutes, is repealed.

Section 14. Paragraphs (c) and (d) of subsection (5) of section 1004.435, Florida Statutes, are amended to read:

1004.435 Cancer control and research.—

(5) RESPONSIBILITIES OF THE BOARD OF GOVERNORS, THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC., AND THE STATE SURGEON GENERAL.—

~~(c) The Board of Governors or the State Surgeon General, after consultation with the council, may adopt rules necessary~~

~~for the implementation of this section.~~

(c)~~(d) The State Surgeon General, after consultation with the council, shall make rules specifying to what extent and on what terms and conditions cancer patients of the state may receive financial aid for the diagnosis and treatment of cancer in any hospital or clinic selected.~~ The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.

Section 15. Paragraph (g) of subsection (2) of section 1004.45, Florida Statutes, is amended to read:

1004.45 Ringling Center for Cultural Arts.—

(2)

(g) The university, in consultation with the direct-support organization, shall establish policies ~~and may adopt rules~~ for the sale or exchange of works of art.

Section 16. Section 1004.62, Florida Statutes, is repealed.

Section 17. Section 1004.77, Florida Statutes, is repealed.

Section 18. Section 1006.02, Florida Statutes, is repealed.

Section 19. Section 1006.035, Florida Statutes, is repealed.

Section 20. Section 1006.051, Florida Statutes, is repealed.

Section 21. Paragraph (d) of subsection (1) of section 1006.09, Florida Statutes, is repealed.

Section 22. Sections 1006.17 and 1006.70, Florida Statutes,

are repealed.

Section 23. Section 1006.65, Florida Statutes, is repealed.

Section 24. Section 1007.21, Florida Statutes, is repealed.

Section 25. Subsection (10) of section 1007.35, Florida Statutes, is repealed.

Section 26. Paragraphs (d) and (e) of subsection (3) of section 1008.31, Florida Statutes, are repealed.

Section 27. Section 1009.68, Florida Statutes, is repealed.

Section 28. Section 1009.85, Florida Statutes, is amended to read:

1009.85 Participation in guaranteed student loan program.—~~The State Board of Education shall adopt rules necessary for participation in the guaranteed student loan program, as provided by the Higher Education Act of 1965 (20 U.S.C. ss. 1071 et seq.), as amended or as may be amended.~~ The intent of this act is to authorize student loans when this state, through the Department of Education, has become an eligible lender under the provisions of the applicable federal laws providing for the guarantee of loans to students and the partial payment of interest on such loans by the United States Government.

Section 29. Section 1012.58, Florida Statutes, is repealed.

Section 30. Subsection (6) of section 1012.71, Florida Statutes, is repealed.

Section 31. Section 1013.231, Florida Statutes, is repealed.

Section 32. Section 1013.32, Florida Statutes, is repealed.

Section 33. Sections 1013.42 and 1013.72, Florida Statutes, are repealed.

Section 34. Sections 1013.502 and 1013.721, Florida

Statutes, are repealed.

Section 35. Effective July 1, 2013, subsection (7) of section 1013.64, Florida Statutes, is repealed.

Section 36. Section 1013.73, Florida Statutes, is repealed.

Section 37. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.428 ~~1003.43~~, s. 1003.429, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 38. Subsection (5) of section 250.115, Florida Statutes, is amended to read:

250.115 Department of Military Affairs direct-support organization.—

(5) ACTIVITIES; RESTRICTIONS.—Any transaction or agreement between the direct-support organization organized pursuant to this section and another direct-support organization ~~or center of technology innovation designated under s. 1004.77~~ must be approved by the Department of Military Affairs.

Section 39. Paragraph (b) of subsection (5) of section 409.1451, Florida Statutes, is amended to read:

409.1451 Independent living transition services.—

(5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.—Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly

in foster care who meet the prescribed conditions and are determined eligible by the department. The department, or a community-based care lead agency when the agency is under contract with the department to provide the services described under this subsection, shall develop a plan to implement those services. A plan shall be developed for each community-based care service area in the state. Each plan that is developed by a community-based care lead agency shall be submitted to the department. Each plan shall include the number of young adults to be served each month of the fiscal year and specify the number of young adults who will reach 18 years of age who will be eligible for the plan and the number of young adults who will reach 23 years of age and will be ineligible for the plan or who are otherwise ineligible during each month of the fiscal year; staffing requirements and all related costs to administer the services and program; expenditures to or on behalf of the eligible recipients; costs of services provided to young adults through an approved plan for housing, transportation, and employment; reconciliation of these expenses and any additional related costs with the funds allocated for these services; and an explanation of and a plan to resolve any shortages or surpluses in order to end the fiscal year with a balanced budget. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(b) *Road-to-Independence Program.*—

1. The Road-to-Independence Program is intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to achieve independence. The amount of the award shall be based on

the living and educational needs of the young adult and may be up to, but may not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.

2. A young adult who has earned a standard high school diploma or its equivalent as described in s. 1003.428, s. 1003.429, ~~1003.43~~ or s. 1003.435, has earned a special diploma or special certificate of completion as described in s. 1003.438, or has reached 18 years of age but is not yet 21 years of age is eligible for the initial award, and a young adult under 23 years of age is eligible for renewal awards, if he or she:

a. Was a dependent child, under chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday or is currently living in licensed foster care or subsidized independent living, or, after reaching the age of 16, was adopted from foster care or placed with a court-approved dependency guardian and has spent a minimum of 6 months in foster care immediately preceding such placement or adoption;

b. Spent at least 6 months living in foster care before reaching his or her 18th birthday;

c. Is a resident of this state as defined in s. 1009.40; and

d. Meets one of the following qualifications:

(I) Has earned a standard high school diploma or its equivalent as described in s. 1003.428, s. 1003.429, ~~1003.43~~ or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has

been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;

(II) Is enrolled full time in an accredited high school; or

(III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.

3. A young adult applying for the Road-to-Independence Program must apply for any other grants and scholarships for which he or she may qualify. The department shall assist the young adult in the application process and may use the federal financial aid grant process to determine the funding needs of the young adult.

4. An award shall be available to a young adult who is considered a full-time student or its equivalent by the educational institution in which he or she is enrolled, unless that young adult has a recognized disability preventing full-time attendance. The amount of the award, whether it is being used by a young adult working toward completion of a high school diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment must consider the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult. An award shall be available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult, but an award may not be less than $25 in order to maintain Medicaid eligibility for the young adult as provided in s. 409.903.

5. The amount of the award may be disregarded for purposes of determining the eligibility for, or the amount of, any other federal or federally supported assistance.

6.a. The department must advertise the criteria, application procedures, and availability of the program to:

(I) Children and young adults in, leaving, or formerly in foster care.

(II) Case managers.

(III) Guidance and family services counselors.

(IV) Principals or other relevant school administrators.

(V) Guardians ad litem.

(VI) Foster parents.

b. The department shall issue awards from the program for each young adult who meets all the requirements of the program to the extent funding is available.

c. An award shall be issued at the time the eligible student reaches 18 years of age.

d. A young adult who is eligible for the Road-to-Independence Program, transitional support services, or aftercare services and who so desires shall be allowed to reside with the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday or to reside in another licensed foster home or with a group care provider arranged by the department.

e. If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award must be transferred with the recipient.

f. Funds awarded to any eligible young adult under this program are in addition to any other services or funds provided

to the young adult by the department through transitional support services or aftercare services.

g. The department shall provide information concerning young adults receiving funding through the Road-to-Independence Program to the Department of Education for inclusion in the student financial assistance database, as provided in s. 1009.94.

h. Funds are intended to help eligible young adults who are former foster children in this state to receive the educational and vocational training needed to become independent and self-supporting. The funds shall be terminated when the young adult has attained one of four postsecondary goals under subsection (3) or reaches 23 years of age, whichever occurs earlier. In order to initiate postsecondary education, to allow for a change in career goal, or to obtain additional skills in the same educational or vocational area, a young adult may earn no more than two diplomas, certificates, or credentials. A young adult attaining an associate of arts or associate of science degree shall be permitted to work toward completion of a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. Road-to-Independence Program funds may not be used for education or training after a young adult has attained a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree.

i. The department shall evaluate and renew each award annually during the 90-day period before the young adult's birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

(I) Complete the number of hours, or the equivalent

considered full time by the educational institution, unless that young adult has a recognized disability preventing full-time attendance, in the last academic year in which the young adult earned an award, except for a young adult who meets the requirements of s. 1009.41.

(II) Maintain appropriate progress as required by the educational institution, except that, if the young adult's progress is insufficient to renew the award at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

j. Funds may be terminated during the interim between an award and the evaluation for a renewal award if the department determines that the award recipient is no longer enrolled in an educational institution as defined in sub-subparagraph 2.d., or is no longer a state resident. The department shall notify a recipient who is terminated and inform the recipient of his or her right to appeal.

k. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches 23 years of age, and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the program.

Section 40. Subsection (7) of section 1001.11, Florida Statutes, is amended to read:

1001.11 Commissioner of Education; other duties.—

(7) The commissioner shall make prominently available on

the department's website the following: links to the Internet-based clearinghouse for professional development regarding physical education; the school wellness and physical education policies and other resources required under s. 1003.453~~(1) and (2)~~; and other Internet sites that provide professional development for elementary teachers of physical education as defined in s. 1003.01(16). These links must provide elementary teachers with information concerning current physical education and nutrition philosophy and best practices that result in student participation in physical activities that promote lifelong physical and mental well-being.

Section 41. Paragraph (f) of subsection (3) and subsection (8) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(f) *Career education courses involving hazardous substances.*—High school students must be given plano safety glasses or devices in career education courses involving the use of hazardous substances likely to cause eye injury~~, in accordance with the provisions of s. 1006.65~~.

(8) STUDENTS WITH DISABILITIES.—Parents of public school students with disabilities and parents of public school students in residential care facilities are entitled to notice and due process in accordance with the provisions of ss. 1003.57 and

1003.58. Public school students with disabilities must be provided the opportunity to meet the graduation requirements for a standard high school diploma in accordance with the provisions of s. 1003.428(3) ~~1003.43(4)~~. Certain public school students with disabilities may be awarded a special diploma upon high school graduation.

Section 42. Paragraph (a) of subsection (7) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies

for reading must be consistent with the Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.428 or~~,~~ s. 1003.429~~, or s. 1003.43~~.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a

racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been

made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being

converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade

levels that will be added, as applicable.

Section 43. Paragraph (g) of subsection (4) of section 1002.34, Florida Statutes, is amended to read:

1002.34 Charter technical career centers.—

(4) CHARTER.—A sponsor may designate centers as provided in this section. An application to establish a center may be submitted by a sponsor or another organization that is determined, by rule of the State Board of Education, to be appropriate. However, an independent school is not eligible for status as a center. The charter must be signed by the governing body of the center and the sponsor and must be approved by the district school board and Florida College System institution board of trustees in whose geographic region the facility is located. If a charter technical career center is established by the conversion to charter status of a public technical center formerly governed by a district school board, the charter status of that center takes precedence in any question of governance. The governance of the center or of any program within the center remains with its board of directors unless the board agrees to a change in governance or its charter is revoked as provided in subsection (15). Such a conversion charter technical career center is not affected by a change in the governance of public technical centers or of programs within other centers that are or have been governed by district school boards. A charter technical career center, or any program within such a center, that was governed by a district school board and transferred to a Florida College System institution prior to the effective date of this act is not affected by this provision. An applicant who wishes to establish a center must submit to the district school

board or Florida College System institution board of trustees, or a consortium of one or more of each, an application on a form developed by the Department of Education which includes:

(g) A method for determining whether a student has satisfied the requirements for graduation specified in s. 1003.428 or s. 1003.429 ~~1003.43~~ and for completion of a postsecondary certificate or degree.

Students at a center must meet the same testing and academic performance standards as those established by law and rule for students at public schools and public technical centers. The students must also meet any additional assessment indicators that are included within the charter approved by the district school board or Florida College System institution board of trustees.

Section 44. Paragraph (b) of subsection (4) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(4) CONTRACT REQUIREMENTS.—Each contract with an approved provider must at minimum:

(b) Provide a method for determining that a student has satisfied the requirements for graduation in s. 1003.428 or~~,~~ s. 1003.429~~, or s. 1003.43~~ if the contract is for the provision of a full-time virtual instruction program to students in grades 9 through 12.

Section 45. Paragraph (e) of subsection (3) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(3) IMPLEMENTATION OPTIONS.—District school boards must

consider, but are not limited to, implementing the following items in order to meet the constitutional class size maximums described in subsection (1):

(e) Use innovative methods to reduce the cost of school construction by using prototype school designs, using SMART Schools designs~~, participating in the School Infrastructure Thrift Program,~~ or any other method not prohibited by law.

Section 46. Subsection (1), paragraph (c) of subsection (7), and subsection (8) of section 1003.429, Florida Statutes, are amended to read:

1003.429 Accelerated high school graduation options.—

(1) Students who enter grade 9 in the 2006-2007 school year and thereafter may select, upon receipt of each consent required by this section, one of the following three high school graduation options:

(a) Completion of the general requirements for high school graduation pursuant to s. 1003.428 ~~or s. 1003.43~~, as applicable;

(b) Completion of a 3-year standard college preparatory program requiring successful completion of a minimum of 18 academic credits in grades 9 through 12. At least 6 of the 18 credits required for completion of this program must be received in classes that are offered pursuant to the International Baccalaureate Program, the Advanced Placement Program, dual enrollment, Advanced International Certificate of Education, or specifically listed or identified by the Department of Education as rigorous pursuant to s. 1009.531(3). The 18 credits required for completion of this program shall be primary requirements and shall be distributed as follows:

1. Four credits in English, with major concentration in

composition and literature;

2. Three credits and, beginning with students entering grade 9 in the 2010-2011 school year, four credits in mathematics at the Algebra I level or higher from the list of courses that qualify for state university admission. Beginning with students entering grade 9 in the 2010-2011 school year, in addition to the Algebra I credit requirement, one of the four credits in mathematics must be geometry or a series of courses equivalent to geometry as approved by the State Board of Education. Beginning with students entering grade 9 in the 2010-2011 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(I) must be met in order for a student to earn the required credit in Algebra I. Beginning with students entering grade 9 in the 2011-2012 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(I) must be met in order for a student to earn the required credit in geometry. Beginning with students entering grade 9 in the 2012-2013 school year, in addition to the Algebra I and geometry credit requirements, one of the four credits in mathematics must be Algebra II or a series of courses equivalent to Algebra II as approved by the State Board of Education;

3. Three credits in science, two of which must have a laboratory component. Beginning with students entering grade 9 in the 2011-2012 school year, one of the three credits in science must be Biology I or a series of courses equivalent to Biology I as approved by the State Board of Education. Beginning with students entering grade 9 in the 2011-2012 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(II) must be met in order for a student to earn

the required credit in Biology I. Beginning with students entering grade 9 in the 2013-2014 school year, one of the three credits must be Biology I or a series of courses equivalent to Biology I as approved by the State Board of Education, one credit must be chemistry or physics or a series of courses equivalent to chemistry or physics as approved by the State Board of Education, and one credit must be an equally rigorous course, as approved by the State Board of Education;

4. Three credits in social sciences, which must include one credit in United States history, one credit in world history, one-half credit in United States government, and one-half credit in economics;

5. Two credits in the same second language unless the student is a native speaker of or can otherwise demonstrate competency in a language other than English. If the student demonstrates competency in another language, the student may replace the language requirement with two credits in other academic courses; and

6. Three credits in electives and, beginning with students entering grade 9 in the 2010-2011 school year, two credits in electives; or

(c) Completion of a 3-year career preparatory program requiring successful completion of a minimum of 18 academic credits in grades 9 through 12. The 18 credits shall be primary requirements and shall be distributed as follows:

1. Four credits in English, with major concentration in composition and literature;

2. Three credits and, beginning with students entering grade 9 in the 2010-2011 school year, four credits in

mathematics, one of which must be Algebra I. Beginning with students entering grade 9 in the 2010-2011 school year, in addition to the Algebra I credit requirement, one of the four credits in mathematics must be geometry or a series of courses equivalent to geometry as approved by the State Board of Education. Beginning with students entering grade 9 in the 2010-2011 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(I) must be met in order for a student to earn the required credit in Algebra I. Beginning with students entering grade 9 in the 2011-2012 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(I) must be met in order for a student to earn the required credit in geometry. Beginning with students entering grade 9 in the 2012-2013 school year, in addition to the Algebra I and geometry credit requirements, one of the four credits in mathematics must be Algebra II or a series of courses equivalent to Algebra II as approved by the State Board of Education;

3. Three credits in science, two of which must have a laboratory component. Beginning with students entering grade 9 in the 2011-2012 school year, one of the three credits in science must be Biology I or a series of courses equivalent to Biology I as approved by the State Board of Education. Beginning with students entering grade 9 in the 2011-2012 school year, the end-of-course assessment requirements under s. 1008.22(3)(c)2.a.(II) must be met in order for a student to earn the required credit in Biology I. Beginning with students entering grade 9 in the 2013-2014 school year, one of the three credits must be Biology I or a series of courses equivalent to Biology I as approved by the State Board of Education, one

credit must be chemistry or physics or a series of courses equivalent to chemistry or physics as approved by the State Board of Education, and one credit must be an equally rigorous course, as approved by the State Board of Education;

4. Three credits in social sciences, which must include one credit in United States history, one credit in world history, one-half credit in United States government, and one-half credit in economics;

5. Three credits in a single vocational or career education program, three credits in career and technical certificate dual enrollment courses, or five credits in vocational or career education courses; and

6. Two credits and, beginning with students entering grade 9 in the 2010-2011 school year, one credit in electives unless five credits are earned pursuant to subparagraph 5.

Any student who selected an accelerated graduation program before July 1, 2004, may continue that program, and all statutory program requirements that were applicable when the student made the program choice shall remain applicable to the student as long as the student continues that program.

(7) If, at the end of each grade, a student is not on track to meet the credit, assessment, or grade-point-average requirements of the accelerated graduation option selected, the school shall notify the student and parent of the following:

(c) The right of the student to change to the 4-year program set forth in s. 1003.428 ~~or s. 1003.43, as applicable~~.

(8) A student who selected one of the accelerated 3-year graduation options shall automatically move to the 4-year

program set forth in s. 1003.428 ~~or s. 1003.43, if applicable,~~ if the student:

(a) Exercises his or her right to change to the 4-year program;

(b) Fails to earn 5 credits by the end of grade 9 or fails to earn 11 credits by the end of grade 10;

(c) Does not achieve a score of 3 or higher on the grade 10 FCAT Writing assessment; or

(d) By the end of grade 11 does not meet the requirements of subsections (1) and (6).

Section 47. Section 1003.438, Florida Statutes, is amended to read:

1003.438 Special high school graduation requirements for certain exceptional students.—A student who has been identified, in accordance with rules established by the State Board of Education, as a student with disabilities who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic impairment; an other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; or students who are deaf or hard of hearing or dual sensory impaired shall not be required to meet all requirements of ~~s. 1003.43 or~~ s. 1003.428 or s. 1003.429 and shall, upon meeting all applicable requirements prescribed by the district school board pursuant to s. 1008.25, be awarded a special diploma in a form prescribed by the commissioner; however, such special graduation requirements prescribed by the district school board must include minimum graduation requirements as prescribed by

the commissioner. Any such student who meets all special requirements of the district school board, but is unable to meet the appropriate special state minimum requirements, shall be awarded a special certificate of completion in a form prescribed by the commissioner. However, this section does not limit or restrict the right of an exceptional student solely to a special diploma or special certificate of completion. Any such student shall, upon proper request, be afforded the opportunity to fully meet all requirements of ~~s. 1003.43 or~~ s. 1003.428 or s. 1003.429 through the standard procedures established therein and thereby to qualify for a standard diploma upon graduation.

Section 48. Subsection (1) of section 1003.49, Florida Statutes, is amended to read:

1003.49 Graduation and promotion requirements for publicly operated schools.—

(1) Each state or local public agency, including the Department of Children and Family Services, the Department of Corrections, the boards of trustees of universities and Florida College System institutions, and the Board of Trustees of the Florida School for the Deaf and the Blind, which agency is authorized to operate educational programs for students at any level of grades kindergarten through 12 shall be subject to all applicable requirements of ss. 1003.428, 1003.429 ~~1003.43~~, 1008.23, and 1008.25. Within the content of these cited statutes each such state or local public agency or entity shall be considered a "district school board."

Section 49. Paragraph (c) of subsection (4) of section 1004.70, Florida Statutes, is amended to read:

1004.70 Florida College System institution direct-support

organizations.—

(4) ACTIVITIES; RESTRICTIONS.—

(c) Any transaction or agreement between one direct-support organization and another direct-support organization ~~or between a direct-support organization and a center of technology innovation designated under s. 1004.77~~ must be approved by the board of trustees.

Section 50. Paragraph (b) of subsection (4) of section 1004.71, Florida Statutes, is amended to read:

1004.71 Statewide Florida College System institution direct-support organizations.—

(4) RESTRICTIONS.—

(b) Any transaction or agreement between a statewide, direct-support organization and any other direct-support organization ~~or between a statewide, direct-support organization and a center of technology innovation designated under s. 1004.77~~ must be approved by the State Board of Education.

Section 51. Paragraph (g) of subsection (2) of section 1006.025, Florida Statutes, is redesignated as paragraph (f) and present paragraph (f) of that subsection is amended, to read:

1006.025 Guidance services.—

(2) The guidance report shall include, but not be limited to, the following:

~~(f) Actions taken to provide information to students for the school-to-work transition pursuant to s. 1006.02.~~

Section 52. Paragraph (a) of subsection (3) of section 1006.15, Florida Statutes, is amended to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student

activities; regulation.—

(3)(a) To be eligible to participate in interscholastic extracurricular student activities, a student must:

1. Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.428 or s. 1003.429 ~~1003.43(1)~~.

2. Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1003.428 or s. 1003.429 ~~1003.43(1) or, for students who entered the 9th grade prior to the 1997-1998 school year, if the student's cumulative grade point average falls below 2.0 on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1) which are taken after July 1, 1997~~. At a minimum, the contract must require that the student attend summer school, or its graded equivalent, between grades 9 and 10 or grades 10 and 11, as necessary.

3. Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.428 or s. 1003.429 ~~1003.43(1)~~ during his or her junior or senior year.

4. Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct policies described in s. 1006.07(2). If a student is convicted of, or is found to have committed, a felony or a delinquent act that would

have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.

Section 53. Subsection (4) of section 1007.263, Florida Statutes, is amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of Education. These rules shall include the following:

(4) A student who has been awarded a special diploma as defined in s. 1003.438 or a certificate of completion as defined in s. 1003.428(7)(b) ~~1003.43(10)~~ is eligible to enroll in certificate career education programs.

Each board of trustees shall establish policies that notify students about, and place students into, adult basic education, adult secondary education, or other instructional programs that provide students with alternatives to traditional college-preparatory instruction, including private provider instruction. A student is prohibited from enrolling in additional college-level courses until the student scores above the cut-score on all sections of the common placement test.

Section 54. Subsections (2) and (9) of section 1007.271, Florida Statutes, are amended to read:

1007.271 Dual enrollment programs.—

(2) For the purpose of this section, an eligible secondary student is a student who is enrolled in a Florida public

secondary school or in a Florida private secondary school which is in compliance with s. 1002.42(2) and provides a secondary curriculum pursuant to s. 1003.428 or~~,~~ s. 1003.429~~, or s. 1003.43~~. Students who are eligible for dual enrollment pursuant to this section may enroll in dual enrollment courses conducted during school hours, after school hours, and during the summer term. However, if the student is projected to graduate from high school before the scheduled completion date of a postsecondary course, the student may not register for that course through dual enrollment. The student may apply to the postsecondary institution and pay the required registration, tuition, and fees if the student meets the postsecondary institution's admissions requirements under s. 1007.263. Instructional time for dual enrollment may vary from 900 hours; however, the school district may only report the student for a maximum of 1.0 FTE, as provided in s. 1011.61(4). Any student enrolled as a dual enrollment student is exempt from the payment of registration, tuition, and laboratory fees. Vocational-preparatory instruction, college-preparatory instruction, and other forms of precollegiate instruction, as well as physical education courses that focus on the physical execution of a skill rather than the intellectual attributes of the activity, are ineligible for inclusion in the dual enrollment program. Recreation and leisure studies courses shall be evaluated individually in the same manner as physical education courses for potential inclusion in the program.

(9) The Commissioner of Education shall appoint faculty committees representing public school, Florida College System institution, and university faculties to identify postsecondary

courses that meet the high school graduation requirements of s. 1003.428 or~~,~~ s. 1003.429~~, or s. 1003.43~~ and to establish the number of postsecondary semester credit hours of instruction and equivalent high school credits earned through dual enrollment pursuant to this section that are necessary to meet high school graduation requirements. Such equivalencies shall be determined solely on comparable course content and not on seat time traditionally allocated to such courses in high school. The Commissioner of Education shall recommend to the State Board of Education those postsecondary courses identified to meet high school graduation requirements, based on mastery of course outcomes, by their course numbers, and all high schools shall accept these postsecondary education courses toward meeting the requirements of s. 1003.428 or~~,~~ s. 1003.429~~, or s. 1003.43~~.

Section 55. Paragraph (c) of subsection (3) of section 1008.22, Florida Statutes, is amended to read:

1008.22 Student assessment program for public schools.—

(3) STATEWIDE ASSESSMENT PROGRAM.—The commissioner shall design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. The commissioner may enter into contracts for the continued administration of the assessment programs authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next and may be paid from the appropriations of either or both fiscal years. The commissioner is authorized to negotiate for the sale or lease of tests,

scoring protocols, test scoring services, and related materials developed pursuant to law. Pursuant to the statewide assessment program, the commissioner shall:

(c) Develop and implement a student achievement assessment program as follows:

1. The Florida Comprehensive Assessment Test (FCAT) measures a student's content knowledge and skills in reading, writing, science, and mathematics. The content knowledge and skills assessed by the FCAT must be aligned to the core curricular content established in the Next Generation Sunshine State Standards. FCAT Reading and FCAT Mathematics shall be administered annually in grades 3 through 10 except, beginning with the 2010-2011 school year, the administration of grade 9 FCAT Mathematics shall be discontinued, and beginning with the 2011-2012 school year, the administration of grade 10 FCAT Mathematics shall be discontinued, except as required for students who have not attained minimum performance expectations for graduation as provided in paragraph (9)(c). FCAT Writing and FCAT Science shall be administered at least once at the elementary, middle, and high school levels except, beginning with the 2011-2012 school year, the administration of FCAT Science at the high school level shall be discontinued. Students enrolled in an Algebra I, geometry, or Biology I course or an equivalent course with a statewide, standardized end-of-course assessment are not required to take the corresponding grade-level FCAT assessment.

2.a. End-of-course assessments must be rigorous, statewide, standardized, and developed or approved by the department. The content knowledge and skills assessed by end-of-course

assessments must be aligned to the core curricular content established in the Next Generation Sunshine State Standards.

(I) Statewide, standardized end-of-course assessments in mathematics shall be administered according to this sub-sub-subparagraph. Beginning with the 2010-2011 school year, all students enrolled in Algebra I or an equivalent course must take the Algebra I end-of-course assessment. For students entering grade 9 during the 2010-2011 school year and who are enrolled in Algebra I or an equivalent, each student's performance on the end-of-course assessment in Algebra I shall constitute 30 percent of the student's final course grade. Beginning with the 2012-2013 school year, the end-of-course assessment in Algebra I shall be administered four times annually. Beginning with students entering grade 9 in the 2011-2012 school year, a student who is enrolled in Algebra I or an equivalent must earn a passing score on the end-of-course assessment in Algebra I or attain an equivalent score as described in subsection (11) in order to earn course credit. Beginning with the 2011-2012 school year, all students enrolled in geometry or an equivalent course must take the geometry end-of-course assessment. For students entering grade 9 during the 2011-2012 school year, each student's performance on the end-of-course assessment in geometry shall constitute 30 percent of the student's final course grade. Beginning with students entering grade 9 during the 2012-2013 school year, a student must earn a passing score on the end-of-course assessment in geometry or attain an equivalent score as described in subsection (11) in order to earn course credit.

(II) Statewide, standardized end-of-course assessments in

science shall be administered according to this sub-sub-subparagraph. Beginning with the 2011-2012 school year, all students enrolled in Biology I or an equivalent course must take the Biology I end-of-course assessment. For the 2011-2012 school year, each student's performance on the end-of-course assessment in Biology I shall constitute 30 percent of the student's final course grade. Beginning with students entering grade 9 during the 2012-2013 school year, a student must earn a passing score on the end-of-course assessment in Biology I in order to earn course credit.

b. During the 2012-2013 school year, an end-of-course assessment in civics education shall be administered as a field test at the middle school level. During the 2013-2014 school year, each student's performance on the statewide, standardized end-of-course assessment in civics education shall constitute 30 percent of the student's final course grade. Beginning with the 2014-2015 school year, a student must earn a passing score on the end-of-course assessment in civics education in order to pass the course and be promoted from the middle grades. The school principal of a middle school shall determine, in accordance with State Board of Education rule, whether a student who transfers to the middle school and who has successfully completed a civics education course at the student's previous school must take an end-of-course assessment in civics education.

c. The commissioner may select one or more nationally developed comprehensive examinations, which may include, but need not be limited to, examinations for a College Board Advanced Placement course, International Baccalaureate course,

or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified in the Industry Certification Funding List, pursuant to rules adopted by the State Board of Education, for use as end-of-course assessments under this paragraph, if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade level expectations for the core curricular content established for the course in the Next Generation Sunshine State Standards. The commissioner may collaborate with the American Diploma Project in the adoption or development of rigorous end-of-course assessments that are aligned to the Next Generation Sunshine State Standards.

d. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the Commissioner of Education shall establish an implementation schedule for the development and administration of additional statewide, standardized end-of-course assessments in English/Language Arts II, Algebra II, chemistry, physics, earth/space science, United States history, and world history. Priority shall be given to the development of end-of-course assessments in English/Language Arts II. The Commissioner of Education shall evaluate the feasibility and effect of transitioning from the grade 9 and grade 10 FCAT Reading and high school level FCAT Writing to an end-of-course assessment in English/Language Arts II. The commissioner shall report the results of the evaluation to the President of the Senate and the Speaker of the House of Representatives no later than July 1, 2011.

3. The assessment program shall measure student content knowledge and skills adopted by the State Board of Education as specified in paragraph (a) and measure and report student performance levels of all students assessed in reading, writing, mathematics, and science. The commissioner shall provide for the tests to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts. The commissioner shall obtain input with respect to the design and implementation of the assessment program from state educators, assistive technology experts, and the public.

4. The assessment program shall be composed of criterion-referenced tests that shall, to the extent determined by the commissioner, include test items that require the student to produce information or perform tasks in such a way that the core content knowledge and skills he or she uses can be measured.

5. FCAT Reading, Mathematics, and Science and all statewide, standardized end-of-course assessments shall measure the content knowledge and skills a student has attained on the assessment by the use of scaled scores and achievement levels. Achievement levels shall range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment. For purposes of FCAT Writing, student achievement shall be scored using a scale of 1 through 6 and the score earned shall be used in calculating school grades. A score shall be designated for each subject area tested, below which score a student’s performance is deemed inadequate. The

school districts shall provide appropriate remedial instruction to students who score below these levels.

6. The State Board of Education shall, by rule, designate a passing score for each part of the grade 10 assessment test and end-of-course assessments. Any rule that has the effect of raising the required passing scores may apply only to students taking the assessment for the first time after the rule is adopted by the State Board of Education. Except as otherwise provided in this subparagraph and as provided in s. 1003.428(8)(b) ~~or s. 1003.43(11)(b)~~, students must earn a passing score on grade 10 FCAT Reading and grade 10 FCAT Mathematics or attain concordant scores as described in subsection (10) in order to qualify for a standard high school diploma.

7. In addition to designating a passing score under subparagraph 6., the State Board of Education shall also designate, by rule, a score for each statewide, standardized end-of-course assessment which indicates that a student is high achieving and has the potential to meet college-readiness standards by the time the student graduates from high school.

8. Participation in the assessment program is mandatory for all students attending public school, including students served in Department of Juvenile Justice programs, except as otherwise prescribed by the commissioner. A student who has not earned passing scores on the grade 10 FCAT as provided in subparagraph 6. must participate in each retake of the assessment until the student earns passing scores or achieves scores on a standardized assessment which are concordant with passing scores pursuant to subsection (10). If a student does not participate

in the statewide assessment, the district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation. A parent must provide signed consent for a student to receive classroom instructional accommodations that would not be available or permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such instructional accommodations. The State Board of Education shall adopt rules, based upon recommendations of the commissioner, for the provision of test accommodations for students in exceptional education programs and for students who have limited English proficiency. Accommodations that negate the validity of a statewide assessment are not allowable in the administration of the FCAT or an end-of-course assessment. However, instructional accommodations are allowable in the classroom if included in a student's individual education plan. Students using instructional accommodations in the classroom that are not allowable as accommodations on the FCAT or an end-of-course assessment may have the FCAT or an end-of-course assessment requirement waived pursuant to the requirements of s. 1003.428(8)(b) ~~or s. 1003.43(11)(b)~~.

9. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

10. District school boards must provide instruction to prepare students in the core curricular content established in the Next Generation Sunshine State Standards adopted under s. 1003.41, including the core content knowledge and skills necessary for successful grade-to-grade progression and high

school graduation. If a student is provided with instructional accommodations in the classroom that are not allowable as accommodations in the statewide assessment program, as described in the test manuals, the district must inform the parent in writing and must provide the parent with information regarding the impact on the student's ability to meet expected performance levels in reading, writing, mathematics, and science. The commissioner shall conduct studies as necessary to verify that the required core curricular content is part of the district instructional programs.

11. District school boards must provide opportunities for students to demonstrate an acceptable performance level on an alternative standardized assessment approved by the State Board of Education following enrollment in summer academies.

12. The Department of Education must develop, or select, and implement a common battery of assessment tools that will be used in all juvenile justice programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards.

13. For students seeking a special diploma pursuant to s. 1003.438, the Department of Education must develop or select and implement an alternate assessment tool that accurately measures the core curricular content established in the Next Generation Sunshine State Standards for students with disabilities under s. 1003.438.

14. The Commissioner of Education shall establish schedules for the administration of statewide assessments and the reporting of student test results. When establishing the schedules for the administration of statewide assessments, the

commissioner shall consider the observance of religious and school holidays. The commissioner shall, by August 1 of each year, notify each school district in writing and publish on the department's Internet website the testing and reporting schedules for, at a minimum, the school year following the upcoming school year. The testing and reporting schedules shall require that:

a. There is the latest possible administration of statewide assessments and the earliest possible reporting to the school districts of student test results which is feasible within available technology and specific appropriations; however, test results for the FCAT must be made available no later than the week of June 8. Student results for end-of-course assessments must be provided no later than 1 week after the school district completes testing for each course. The commissioner may extend the reporting schedule under exigent circumstances.

b. FCAT Writing may not be administered earlier than the week of March 1, and a comprehensive statewide assessment of any other subject may not be administered earlier than the week of April 15.

c. A statewide, standardized end-of-course assessment is administered at the end of the course. The commissioner shall select an administration period for assessments that meets the intent of end-of-course assessments and provides student results prior to the end of the course. School districts shall administer tests in accordance with the schedule determined by the commissioner. For an end-of-course assessment administered at the end of the first semester, the commissioner shall determine the most appropriate testing dates based on a review

of each school district's academic calendar.

The commissioner may, based on collaboration and input from school districts, design and implement student testing programs, for any grade level and subject area, necessary to effectively monitor educational achievement in the state, including the measurement of educational achievement of the Next Generation Sunshine State Standards for students with disabilities. Development and refinement of assessments shall include universal design principles and accessibility standards that will prevent any unintended obstacles for students with disabilities while ensuring the validity and reliability of the test. These principles should be applicable to all technology platforms and assistive devices available for the assessments. The field testing process and psychometric analyses for the statewide assessment program must include an appropriate percentage of students with disabilities and an evaluation or determination of the effect of test items on such students.

Section 56. Section 1008.23, Florida Statutes, is amended to read:

1008.23 Confidentiality of assessment instruments.—All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to ss. ~~1003.43,~~ 1008.22~~,~~ and 1008.25 shall be confidential and exempt from the provisions of s. 119.07(1) and from s. 1001.52. Provisions governing access, maintenance, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

Section 57. Paragraph (a) of subsection (1) of section 1009.40, Florida Statutes, is amended to read:

1009.40 General requirements for student eligibility for state financial aid awards and tuition assistance grants.—

(1)(a) The general requirements for eligibility of students for state financial aid awards and tuition assistance grants consist of the following:

1. Achievement of the academic requirements of and acceptance at a state university or Florida College System institution; a nursing diploma school approved by the Florida Board of Nursing; a Florida college or university which is accredited by an accrediting agency recognized by the State Board of Education; any Florida institution the credits of which are acceptable for transfer to state universities; any career center; or any private career institution accredited by an accrediting agency recognized by the State Board of Education.

2. Residency in this state for no less than 1 year preceding the award of aid or a tuition assistance grant for a program established pursuant to s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, s. 1009.56, s. 1009.60, s. 1009.62, ~~s. 1009.68,~~ s. 1009.72, s. 1009.73, s. 1009.77, s. 1009.89, or s. 1009.891. Residency in this state must be for purposes other than to obtain an education. Resident status for purposes of receiving state financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21.

3. Submission of certification attesting to the accuracy, completeness, and correctness of information provided to demonstrate a student's eligibility to receive state financial

aid awards or tuition assistance grants. Falsification of such information shall result in the denial of any pending application and revocation of any award or grant currently held to the extent that no further payments shall be made. Additionally, students who knowingly make false statements in order to receive state financial aid awards or tuition assistance grants commit a misdemeanor of the second degree subject to the provisions of s. 837.06 and shall be required to return all state financial aid awards or tuition assistance grants wrongfully obtained.

Section 58. Paragraph (b) of subsection (1) of section 1009.531, Florida Statutes, is amended to read:

1009.531 Florida Bright Futures Scholarship Program; student eligibility requirements for initial awards.—

(1) Effective January 1, 2008, in order to be eligible for an initial award from any of the three types of scholarships under the Florida Bright Futures Scholarship Program, a student must:

(b) Earn a standard Florida high school diploma or its equivalent pursuant to s. 1003.428, s. 1003.4281, s. 1003.429, ~~s. 1003.43,~~ or s. 1003.435 unless:

1. The student completes a home education program according to s. 1002.41; or

2. The student earns a high school diploma from a non-Florida school while living with a parent or guardian who is on military or public service assignment away from Florida.

Section 59. Paragraph (c) of subsection (2) of section 1009.94, Florida Statutes, is amended to read:

1009.94 Student financial assistance database.—

(2) For purposes of this section, financial assistance includes:

(c) Any financial assistance provided under s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, s. 1009.55, s. 1009.56, s. 1009.60, s. 1009.62, ~~s. 1009.68,~~ s. 1009.70, s. 1009.701, s. 1009.72, s. 1009.73, s. 1009.74, s. 1009.77, s. 1009.89, or s. 1009.891.

Section 60. Paragraph (c) of subsection (1) of section 1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(c)1. A "full-time equivalent student" is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the equivalent of one full-time student based on the following calculations:

(I) A full-time student in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph (a)1. or subparagraph (a)2. The sum of the fractions for each program may not exceed the maximum value set forth in subsection

(4).

(II) A prekindergarten student with a disability shall meet the requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 12 in a full-time virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of six full-credit completions or the prescribed level of content that counts toward promotion to the next grade in programs listed in s. 1011.62(1)(c). Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(IV) A full-time equivalent student for students in kindergarten through grade 12 in a part-time virtual instruction program under s. 1002.45 shall consist of six full-credit completions in programs listed in s. 1011.62(1)(c)1. and 3. Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(V) A Florida Virtual School full-time equivalent student shall consist of six full-credit completions or the prescribed

level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1. and 3. for students participating in kindergarten through grade 12 part-time virtual instruction and the programs listed in s. 1011.62(1)(c) for students participating in kindergarten through grade 12 full-time virtual instruction. Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2014-2015 fiscal year, when s. 1008.22(3)(g) is implemented, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment shall be adjusted after the student completes the end-of-course assessment.

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

~~(VII) Each successfully completed credit earned under the alternative high school course credit requirements authorized in s. 1002.375, which is not reported as a portion of the 900 net hours of instruction pursuant to subparagraph (1)(a)1., shall be calculated as 1/6 FTE.~~

(VII)~~(VIII)~~(A) A full-time equivalent student for courses requiring a statewide, standardized end-of-course assessment pursuant to s. 1008.22(3)(c)2.a. shall be defined and reported based on the number of instructional hours as provided in this subsection for the first 3 years of administering the end-of-course assessment. Beginning in the fourth year of administering the end-of-course assessment, the FTE shall be credit-based and each course shall be equal to 1/6 FTE. The reported FTE shall be adjusted after the student successfully completes the end-of-

course assessment pursuant to s. 1008.22(3)(c)2.a.

(B) For students enrolled in a school district as a full-time student, the district may report 1/6 FTE for each student who passes a statewide, standardized end-of-course assessment without being enrolled in the corresponding course.

(C) The FTE earned under this sub-sub-subparagraph and any FTE for courses or programs listed in s. 1011.62(1)(c) that do not require passing a statewide, standardized end-of-course assessment are subject to the requirements in subsection (4).

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in juvenile justice education programs and the Florida Virtual School.

The department shall determine and implement an equitable method of equivalent funding for experimental schools and for schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum school day.

Section 61. Paragraph (b) of subsection (2) of section 1013.35, Florida Statutes, is amended to read:

1013.35 School district educational facilities plan; definitions; preparation, adoption, and amendment; long-term

work programs.—

(2) PREPARATION OF TENTATIVE DISTRICT EDUCATIONAL FACILITIES PLAN.—

(b) The plan must also include a financially feasible district facilities work program for a 5-year period. The work program must include:

1. A schedule of major repair and renovation projects necessary to maintain the educational facilities and ancillary facilities of the district.

2. A schedule of capital outlay projects necessary to ensure the availability of satisfactory student stations for the projected student enrollment in K-12 programs. This schedule shall consider:

a. The locations, capacities, and planned utilization rates of current educational facilities of the district. The capacity of existing satisfactory facilities, as reported in the Florida Inventory of School Houses must be compared to the capital outlay full-time-equivalent student enrollment as determined by the department, including all enrollment used in the calculation of the distribution formula in s. 1013.64.

b. The proposed locations of planned facilities, whether those locations are consistent with the comprehensive plans of all affected local governments, and recommendations for infrastructure and other improvements to land adjacent to existing facilities. The provisions of ss. 1013.33(6), (7), and (8) and 1013.36 must be addressed for new facilities planned within the first 3 years of the work plan, as appropriate.

c. Plans for the use and location of relocatable facilities, leased facilities, and charter school facilities.

d. Plans for multitrack scheduling, grade level organization, block scheduling, or other alternatives that reduce the need for additional permanent student stations.

e. Information concerning average class size and utilization rate by grade level within the district which will result if the tentative district facilities work program is fully implemented.

f. The number and percentage of district students planned to be educated in relocatable facilities during each year of the tentative district facilities work program. For determining future needs, student capacity may not be assigned to any relocatable classroom that is scheduled for elimination or replacement with a permanent educational facility in the current year of the adopted district educational facilities plan and in the district facilities work program adopted under this section. Those relocatable classrooms clearly identified and scheduled for replacement in a school-board-adopted, financially feasible, 5-year district facilities work program shall be counted at zero capacity at the time the work program is adopted and approved by the school board. However, if the district facilities work program is changed and the relocatable classrooms are not replaced as scheduled in the work program, the classrooms must be reentered into the system and be counted at actual capacity. Relocatable classrooms may not be perpetually added to the work program or continually extended for purposes of circumventing this section. All relocatable classrooms not identified and scheduled for replacement, including those owned, lease-purchased, or leased by the school district, must be counted at actual student capacity. The district educational facilities

plan must identify the number of relocatable student stations scheduled for replacement during the 5-year survey period and the total dollar amount needed for that replacement.

g. Plans for the closure of any school, including plans for disposition of the facility or usage of facility space, and anticipated revenues.

h. Projects for which capital outlay and debt service funds accruing under s. 9(d), Art. XII of the State Constitution are to be used shall be identified separately in priority order on a project priority list within the district facilities work program.

3. The projected cost for each project identified in the district facilities work program. For proposed projects for new student stations, a schedule shall be prepared comparing the planned cost and square footage for each new student station, by elementary, middle, and high school levels, to the low, average, and high cost of facilities constructed throughout the state during the most recent fiscal year for which data is available from the Department of Education.

4. A schedule of estimated capital outlay revenues from each currently approved source which is estimated to be available for expenditure on the projects included in the district facilities work program.

5. A schedule indicating which projects included in the district facilities work program will be funded from current revenues projected in subparagraph 4.

6. A schedule of options for the generation of additional revenues by the district for expenditure on projects identified in the district facilities work program which are not funded

under subparagraph 5. Additional anticipated revenues may include ~~effort index grants, SIT Program awards, and~~ Classrooms First funds.

Section 62. Subsection (2) of section 1013.356, Florida Statutes, is amended to read:

1013.356 Local funding for educational facilities benefit districts or community development districts.—Upon confirmation by a district school board of the commitment of revenues by an educational facilities benefit district or community development district necessary to construct and maintain an educational facility contained within an individual district facilities work program or proposed by an approved charter school or a charter school applicant, the following funds shall be provided to the educational facilities benefit district or community development district annually, beginning with the next fiscal year after confirmation until the district's financial obligations are completed:

(2) For construction and capital maintenance costs not covered by the funds provided under subsection (1), an annual amount contributed by the district school board equal to one-half of the remaining costs of construction and capital maintenance of the educational facility. Any construction costs above the cost-per-student criteria established in s. 1013.64(6)(b)1. ~~for the SIT Program in s. 1013.72(2)~~ shall be funded exclusively by the educational facilities benefit district or the community development district. Funds contributed by a district school board shall not be used to fund operational costs.

Educational facilities funded pursuant to this act may be constructed on land that is owned by any person after the district school board has acquired from the owner of the land a long-term lease for the use of this land for a period of not less than 40 years or the life expectancy of the permanent facilities constructed thereon, whichever is longer. All interlocal agreements entered into pursuant to this act shall provide for ownership of educational facilities funded pursuant to this act to revert to the district school board if such facilities cease to be used for public educational purposes prior to 40 years after construction or prior to the end of the life expectancy of the educational facilities, whichever is longer.

Section 63. Subsections (4), (5), and (6) of section 1013.41, Florida Statutes, are amended to read:

1013.41 SMART schools; Classrooms First; legislative purpose.—

(4) OFFICE OF EDUCATIONAL FACILITIES.—It is the purpose of the Legislature to require the Office of Educational Facilities to assist school districts in building SMART schools utilizing functional and frugal practices. The Office of Educational Facilities must review district facilities work programs and projects and ~~identify districts qualified for incentive funding available through School Infrastructure Thrift Program awards;~~ identify opportunities to maximize design and construction savings; develop school district facilities work program performance standards; and provide for review and recommendations to the Governor, the Legislature, and the State Board of Education.

~~(5) EFFORT INDEX GRANTS. It is the purpose of the Legislature to create s. 1013.73, in order to provide grants from state funds to assist school districts that have provided a specified level of local effort funding.~~

~~(6) SCHOOL INFRASTRUCTURE THRIFT (SIT) PROGRAM AWARDS. It is the purpose of the Legislature to convert the SIT Program established in ss. 1013.42 and 1013.72 to an incentive award program to encourage functional, frugal facilities and practices.~~

Section 64. Paragraph (b) of subsection (6) of section 1013.64, Florida Statutes, is amended to read:

1013.64 Funds for comprehensive educational plant needs; construction cost maximums for school district capital projects.—Allocations from the Public Education Capital Outlay and Debt Service Trust Fund to the various boards for capital outlay projects shall be determined as follows:

(6)

(b)1. A district school board must not use funds from the following sources: Public Education Capital Outlay and Debt Service Trust Fund; School District and Community College District Capital Outlay and Debt Service Trust Fund; Classrooms First Program funds provided in s. 1013.68; ~~effort index grant funds provided in s. 1013.73;~~ nonvoted 1.5-mill levy of ad valorem property taxes provided in s. 1011.71(2); Classrooms for Kids Program funds provided in s. 1013.735; District Effort Recognition Program funds provided in s. 1013.736; or High Growth District Capital Outlay Assistance Grant Program funds provided in s. 1013.738 for any new construction of educational plant space with a total cost per student station, including

change orders, that equals more than:

a. $17,952 for an elementary school,

b. $19,386 for a middle school, or

c. $25,181 for a high school,

(January 2006) as adjusted annually to reflect increases or decreases in the Consumer Price Index.

2. A district school board must not use funds from the Public Education Capital Outlay and Debt Service Trust Fund or the School District and Community College District Capital Outlay and Debt Service Trust Fund for any new construction of an ancillary plant that exceeds 70 percent of the average cost per square foot of new construction for all schools.

Section 65. Section 1013.69, Florida Statutes, is amended to read:

1013.69 Full bonding required to participate in programs.—Any district with unused bonding capacity in its Capital Outlay and Debt Service Trust Fund allocation that certifies in its district educational facilities plan that it will not be able to meet all of its need for new student stations within existing revenues must fully bond its Capital Outlay and Debt Service Trust Fund allocation before it may participate in Classrooms First~~, the School Infrastructure Thrift (SIT) Program, or the Effort Index Grants Program~~.

Section 66. Paragraph (b) of subsection (2) of section 1013.738, Florida Statutes, is amended to read:

1013.738 High Growth District Capital Outlay Assistance Grant Program.—

(2) In order to qualify for a grant, a school district must

meet the following criteria:

(b) Fifty percent of the revenue derived from the 2-mill nonvoted discretionary capital outlay millage for the past 4 fiscal years, when divided by the district's growth in capital outlay FTE students over this period, produces a value that is less than the average cost per student station calculated pursuant to s. 1013.64(6)(b)1. ~~1013.72(2)~~, and weighted by statewide growth in capital outlay FTE students in elementary, middle, and high schools for the past 4 fiscal years.

Section 67. Except as otherwise expressly provided in this act, 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)

3/21/2013
Meeting Date

Topic _____ Bill Number 1096 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 718
INTRODUCER:	Rules Committee; Judiciary Committee; Senator Stargel; and Others
SUBJECT:	Family Law
DATE:	March 22, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Brown	Phelps	RC	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 718 revises laws relating to the equitable distribution of marital assets and liabilities, alimony, and child custody.

The bill establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding.

The bill authorizes a court to require a party to a divorce to provide security to ensure the payment of the other party's share of marital assets through installment payments. The court is also required to impose interest charges or otherwise recognize the time value of money in determining the amount of installment payments.

The bill revises the factors a court must consider in awarding alimony:

- The court must consider the same factors in awarding temporary alimony, alimony sought without a concurrent filing of a dissolution of marriage, and alimony required upon entry of a final order.

- The bill deletes as a factor the standard of living enjoyed during a marriage, and replaces it with the net income and standard of living of each party in light of the alimony award.
- The bill also creates a rebuttable presumption that both parties will have a reduced standard of living after a dissolution of marriage.
- Nonmarital assets may be considered if relied upon by the parties during the marriage.
- The bill requires the court to impute income to an unemployed obligee based on the obligee's prior income and duration of unemployment.

In requiring an obligor to purchase a life insurance policy to secure an alimony award, the bill authorizes the obligor to select decreasing term life insurance or other form of term life insurance. Before a court may order security, the court must find special circumstances related to availability, cost, and financial impact on the obligated party.

The bill amends presumptions relating to alimony based on length of a marriage:

- The bill increases the number of years of marriage required for a marriage to qualify as a short-term, mid-term, or long-term marriage.
- The bill creates a rebuttable presumption against alimony for short-term marriages, and in favor of alimony for long-term marriages.
- The bill specifies percentage caps on an obligor's income that may be awarded as alimony, which are based on length of the marriage, and specifies exceptions to the caps.

The bill amends the forms of alimony:

- Permanent, periodic alimony is eliminated.
- Forms of alimony are prioritized in order of bridge-the-gap, followed by rehabilitative alimony, and lastly, durational alimony.
- The court may not award alimony for a period of time longer than 50 percent of the length of the marriage, unless the obligee establishes need under a preponderance of the evidence.
- The bill limits the circumstances under which a court may award combinations of alimony forms.

The bill changes the thresholds for modifying an alimony award based on a substantial change in circumstances:

- If alimony and child support are payable concurrently, a reduction or termination of child support does not singularly justify modification of alimony.
- The assets of an obligor's spouse or person with whom the obligor cohabits may not be considered in an action to modify alimony except in exceptional circumstances.
- Reaching a reasonable retirement age, retiring, and not intending to return to work constitutes a substantial change in circumstances.
- A court must reduce or terminate an alimony award based on a supportive relationship between the obligee and another person.
- An obligee who is in a supportive relationship and who challenges a modification petition must prove by clear and convincing evidence that the obligee's need for alimony is not reduced by the relationship.

- The modification of an alimony award is presumed to apply retroactively to the date of filing of a petition for modification.

The bill expressly provides that the revised criteria for alimony are a substantial change in circumstances. The bill authorizes an obligor to seek the modification of a qualifying alimony award based on the revised criteria.

The bill restricts the court's ability to reserve jurisdiction for a separate adjudication of issues after entry of a final judgment in a dissolution of marriage case.

The bill provides that equal time-sharing for parents of minor children is in the best interests of the child. Exceptions apply, including when a parent has a history of domestic violence or otherwise poses a danger to a child; a parent is incarcerated; the distance between residences makes equal time-sharing impracticable; or a parent does not request at least 50 percent time-sharing. The court may depart from equal time sharing under extenuating circumstances if the court provides written findings. This provision applies prospectively.
This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.075, 61.08, 61.09, 61.13, 61.14, and 61.19.

II. Present Situation:

Equitable Distribution

Equitable Distribution of Marital Assets and Liabilities under Kaaa v. Kaaa[1]

In *Kaaa v. Kaaa*, the Florida Supreme Court held that "passive appreciation of a nonmarital asset … is properly considered a marital asset where marital funds or the efforts of either party contributed to the appreciation."[2] Payment of a mortgage for real property with marital funds subjects the passive appreciation in the value of the real property to equitable distribution.[3] The Court recognized that the marital portion of nonmarital property encumbered by a mortgage paid down with marital funds includes two components: (1) a portion of the enhancement value of the marital asset resulting from the contributions of the nonowner spouse and (2) a portion of the value of the passive appreciation of that asset that accrued during the marriage.[4]

In *Kaaa*, the Supreme Court provided a methodology for courts to use in determining the value of the passive appreciation of nonmarital real property to be equitably distributed and in allocating that value to both owner and nonowner spouse.[5] Pursuant to the methodology, a court must make several steps:

> First, the court must determine the overall current fair market value of the home. Second, the court must determine whether there has been a passive appreciation in the home's value. Third, the court must determine whether the passive appreciation is a

[1] *Kaaa v. Kaaa*, 58 So. 3d 867 (Fla. 2010).
[2] *Kaaa*, 58 So. 3d at 870.
[3] *Id.* at 871.
[4] *Id.* at 871-872.
[5] *Id.* at 872.

> marital asset under section 61.075(5)(a)(2)[, F.S]. This step must include findings of fact by the trial court that marital funds were used to pay the mortgage and that the nonowner spouse made contributions to the property. Moreover, the trial court must determine to what extent the contributions of the nonowner spouse affected the appreciation of the property. Fourth, the trial court must determine the value of the passive appreciation that accrued during the marriage and is subject to equitable distribution. Fifth, after the court determines the value of the passive appreciation to be equitably distributed, the court's next step is to determine how the value is allocated.[6]

The Supreme Court adopted the following formula used in *Stevens v. Stevens*, for the allocation of the appreciated value of nonmarital real property:

> If a separate asset is unencumbered and no marital funds are used to finance its acquisition, improvement, or maintenance, no portion of its value should ordinarily be included in the marital estate, absent improvements effected by marital labor. If an asset is financed entirely by borrowed money which marital funds repay, the entire asset should be included in the marital estate. In general, in the absence of improvements, *the portion of the appreciated value of a separate asset which should be treated as a marital asset will be the same as the fraction calculated by dividing the indebtedness with which the asset was encumbered at the time of the marriage by the value of the asset at the time of the marriage*.[7]

Passive appreciation of a nonmarital asset that is unencumbered is not subject to equitable distribution, absent the use of any marital funds or marital labor for its acquisition, improvement, or maintenance.[8]

Family Law Section's Concern with Kaaa v. Kaaa

During the 2012 Legislative Session, the Family Law Section of The Florida Bar stated "the formula adopted by the Supreme Court to quantify the marital portion of the passive appreciation is flawed because there is no relationship between the amount of marital funds utilized to pay down the mortgage during the marriage and the passive appreciation of the subject property."[9] According to the Family Law Section of The Florida Bar, "the formula adopted by the Florida Supreme Court in *Kaaa*, if applied to certain factual scenarios, would result in grossly inequitable results."[10]

The Family Law Section of The Florida Bar additionally argues that the *Kaaa* decision is inconsistent with s. 61.075(6)(a)1.b., F.S., by requiring a nonowner spouse to have made

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[6] *Id.*
[7] *Kaaa*, 58 So. 3d at 872 (quoting *Stevens v. Stevens*, 651 So. 2d 1306, 1307-08 (Fla. 1st DCA 1995).
[8] *Stevens v. Stevens*, 651 So. 2d 1306, 1307 (Fla. 1st DCA 2006); Dawn D. Nichols and Sean K. Ahmed, *Nonmarital Real Estate: Is the Appreciation Marital, Nonmarital, or a Combination of Both?*, 81 FLA. B.J. 75, 75 (Oct. 2007).
[9] Correspondence to committee staff from David Manz, Chairman of Family Law Section, Florida Bar and John W. Foster, Sr., Chairman of Equitable Distribution Committee, Family Law Section, Florida Bar, (Dec. 19, 2011) (on file with the Senate Committee on Judiciary).
[10] *Id.*

contributions to the property as a prerequisite to sharing in the passive appreciation of the property.[11] Section 61.075(6)(a)1.b., F.S., states that marital assets and liabilities include "the enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage ***or*** from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both."[12]

Security and Interest for Installment Payments

In equitably distributing marital assets and liabilities, pursuant to s. 61.075(10), F.S., a court may order a party to pay a monetary payment in a lump sum or in installments paid over a fixed period. Section 61.075(10), F.S., does not currently give courts the discretion to require the payor to provide security or pay a reasonable rate of interest if installments are ordered.

Alimony as Other Than Alimony Awarded through a Final Court Order

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.[13] Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.[14]

Alimony Requested Without a Filing of Dissolution

The court may consider a request for alimony or child support from a party without a filing for a dissolution of marriage in place, based on the ability of the other party to contribute.[15]

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on financial need and the ability to pay.[16] After making an initial determination to award alimony, the court must consider:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.

[11] *Id.*
[12] (Emphasis added).
[13] 24A AM. JR. 2D *Divorce and Separation* §615.
[14] Section 61.071, F.S.
[15] Section 61.09, F.S.
[16] Section 61.08(2), F.S.

- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[17]

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[18]

Presumptions that Favor or Disfavor Alimony Based on Length of Marriage

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.[19]

Florida law provides that:

- A short-term marriage is a marriage of less than 7 years.
- A moderate-term marriage is a marriage of more than 7 but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.[20]

As shown in the table below, the statutes appear to create a presumption in favor of permanent periodic alimony following a long-term marriage.[21] A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.[22]

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for only exceptional circumstances.

Forms of Alimony

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[23]

Types of Alimony

	Bridge-the-gap	**Rehabilitative**	**Durational**	**Permanent**
Purpose	Allows a party to transition from being	Assists a party in becoming self-sufficient through skills training, education,	Provides a party with economic assistance for a set period of time after	Provides for the needs and necessities of life as established during the

[17] Section 61.08(2)(a) through (j), F.S.
[18] Section 61.08(3), F.S.
[19] *Id.*
[20] Section 61.08(4), F.S.
[21] Section 61.08(8), F.S.
[22] Section 61.08(7), F.S.
[23] Section 61.08(1), F.S.

	married to being single upon showing legitimate short-term need.	or work experience.	a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award.	marriage for a party who lacks the financial ability to maintain needs.
Length of Time	Up to 2 years.	Temporary.	Set period of time but not to exceed length of marriage.	Permanent.
Modifiable/ Termination	Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient.	Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan.	Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient.	Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient.
How Established		Requires inclusion of a specific and defined rehabilitative plan.		Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration.

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.[24]

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.[25] If the court modifies support on this basis, the court is authorized to modify support retroactively to the date of the filing of the action.[26]

[24] Section 61.08(5) through (8), F.S.

[25] Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where: an obligor's health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[27]

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[28]

Premarital Agreements

Premarital agreements must be in writing and signed by both parties.[29] Parties may contract on all aspects of spousal support, including addressing how alimony is established, modified, waived, or eliminated.[30] Florida law does not require consideration for a court to uphold and enforce a premarital agreement.[31] The agreement takes effect upon the event of marriage.[32]Agreements can be overturned on the same bases that other sorts of contracts are rendered unenforceable, including that a party did not enter the agreement voluntarily; a party effected the agreement under fraud, duress, coercion, or overreaching; or the agreement was unconscionable.[33]

advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that obligee's income jumped from $1,710 to $4,867 a month, making her income higher than the obligor's income of $3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

[26] *Id*.

[27] Section 61.14(b), F.S.

[28] Section 61.14(1)(b)1., F.S.

[29] Section 61.079(3), F.S.

[30] Section 61.079(4)(a)4., F.S.

[31] *Id*.

[32] Section 61.079(5), F.S.

[33] Section 61.079(7)(a), F.S.

Parenting and Time-sharing

The public policy of the state is for each minor child to have frequent and continuing contact with both parents.[34] The court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[35]

III. Effect of Proposed Changes:

This bill amends laws relating to the equitable distribution of marital assets and liabilities, alimony, and child custody.

Equitable Distribution of Marital Assets and Liabilities

The bill establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding. Under the bill, the value of the marital portion of nonmarital real property is comprised of the following:

- The mortgage principal paid during the marriage from marital funds.
- A portion of the passive appreciation of the property which is related to the amount of marital funds used to pay the mortgage.
- Any active appreciation of the property resulting from the efforts or contributions of either party during the marriage.

Under the formula, the passive appreciation in the marital property which is subject to equitable distribution must be determined by multiplying the marital fraction by the passive appreciation of the property during the marriage.

The passive appreciation is determined by subtracting the gross value of the property on date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage and less any additional debts secured by the property during the marriage.

The numerator of the marital fraction consists of the amount of mortgage principal paid on any mortgage on the property from marital funds. The denominator consists of the value of the real property on the date of marriage, the date of acquisition of the property, or the date the property was first encumbered by a mortgage on which principal was paid from marital funds, whichever is later.

The value of the marital portion of nonmarital real property may not exceed the total net equity of the property on the valuation date in the dissolution action.

[34] Section 61.13(2)(c)1., F.S.
[35] Section 61.13 (2)(c)2., F.S.

The bill permits a party to argue to a court that the formula would be inequitable, and therefore should not apply to the particular circumstances of the case.

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If a court requires security or interest, the court must make written findings relating to any deferred payments, the amount of any security required, and the interest. The bill does not preclude the intended recipient of the installment payments from taking action under the procedures to enforce a judgment, in ch. 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

Alimony

Alimony Pendente Lite (Section 1)

Current law does not specify guidelines for the court to consider in awarding temporary alimony. This bill requires the court to calculate temporary alimony using the same statutory factors required for other alimony awards.

Alimony Requested Without a Filing of Dissolution (Section 4)

This bill requires the court to calculate alimony requested without a filing of dissolution of marriage using the same statutory factors required for other alimony awards.

Bases for Alimony (Section 3)

The bill establishes that a party seeking alimony has the burden of proving a need for alimony and that the other party has the ability to pay alimony. If the need and ability to pay are established, the court must consider the revised statutory factors in determining the type and amount of alimony.

This bill removes the standard of living established during the marriage as a factor for the court to consider in awarding alimony. The bill adds new factors, which include:

- The needs and necessities of life after dissolution of marriage, taking into account the lifestyle of the parties during the marriage; and
- The net income and standard of living available to each party in light of the alimony award.

However, the bill creates a rebuttable presumption that both parties will have a reduced standard of living after dissolution of marriage.

The bill appears to allow the court to consider nonmarital assets as a factor if the assets were relied upon by the parties during the marriage.

Imputing Income (s. 61.08(11), F.S.)

A court must impute income to the obligee in varying percentages of the obligee's income before becoming unemployed, based on the length of time that an obligee is unemployed. An obligee can dispute imputed income by a showing of a preponderance of evidence that the obligee does not have the ability to earn the imputed income through reasonable means. If an obligee alleges a physical disability as the cause for reduced income, the disability stated must conform to disabilities defined by the Social Security Administration. The bill does not address situations in which an obligee is underemployed. A court may not impute social security retirement benefits as income to an obligor of alimony.

Presumptions that Favor or Disfavor Alimony Based on Length of Marriage (Section 3)

The bill increases the amount of time for a marriage to qualify as a short-term, moderate-term, or long-term marriage.

The bill increases the length of time for each category of marriage by 3 years as follows:

- The duration of a short-term marriage is increased to 12 years.
- The duration of a mid-term marriage is increased to more than 12 years but less than 20 years.
- The duration of a long-term marriage is increased to 20 years or more.[36]

The increased length of time within each category has the effect of increasing the threshold number of years of marriage required for an obligee to be eligible to qualify for alimony.

Short-term Marriage (s. 61.08(8)(a), F.S.)

The bill creates a rebuttable presumption against any award of alimony for a short-term marriage. The party seeking bridge-the-gap or rehabilitative alimony may overcome the presumption through a showing of need under a preponderance of the evidence. For durational alimony, a party must demonstrate by clear and convincing evidence a need for alimony. Any monthly award is capped at 20 percent of the obligor's income.

Mid-term Marriage (s. 61.08(8)(b), F.S.)

The bill stipulates that no presumption applies for or against an award of alimony following a mid-term marriage, unless the party seeking alimony proves the need for alimony by a preponderance of the evidence. Any monthly award is capped at 30 percent of the obligor's income.

Long-term Marriage (s. 61.08(8)(c), F.S.)

The bill applies a rebuttable presumption in favor of alimony for a long-term marriage, unless the party opposing alimony establishes by clear and convincing evidence that no needs exists. Any monthly award is capped at 33 percent of the obligor's income.

[36] Section 61.08(4), F.S.

The court may enter an order exceeding the monthly caps on awards if the court provides a written finding of a need for additional alimony. The court may not award alimony to a party with a monthly net income equal to or greater than the other party.

Forms of Alimony (s. 61.08(2)(a), (4), and (7), F.S.)

This bill eliminates permanent periodic alimony. Instead, the bill requires the court to prioritize bridge-the-gap alimony, followed by rehabilitative alimony, and lastly, durational alimony. In rare instances, the court may award a party alimony for longer than 50 percent of the length of the marriage. However, the party must establish by a preponderance of the evidence that circumstances justify the need for a longer period of alimony. The bill authorizes the court to award a combination of forms of alimony, but only to provide greater economic assistance towards rehabilitation. In awarding any type alimony, the court must issue written findings.

This bill aligns life insurance requirements with duration of an alimony award. Specifically, the bill authorizes a person who is required to purchase life insurance to secure an alimony award to select decreasing term life insurance or another form of term life insurance. This bill requires a court to find special circumstances before it may award security. Requirements for life insurance in orders are modifiable if a court modifies an alimony award.

Modification and Termination of Alimony (s. 61.14(1) and (11), F.S.)

This bill imposes a burden of proof, clear and convincing evidence, on the party seeking an increase in alimony based on an permanently increased ability to pay. An increase is only considered permanent in nature when the obligor maintains it consistently for 2 years.

If alimony and child support are payable concurrently, a reduction or termination of child support does not singularly justify a modification of alimony.

The bill provides that an obligor's remarriage or cohabitation is not a basis for the modification of an alimony award. Further, the bill prohibits in modification actions the consideration of the assets of the obligor's spouse or person with whom the obligor resides except in exceptional circumstances.

The bill creates a rebuttable presumption that a modification or termination of an alimony award is retroactive to the date of the petition filing. If the court finds that the obligee unnecessarily or unreasonably litigated modification, the court may award the obligor reasonable attorney fees and costs.

Supportive Relationship (s. 61.14(1)(b)2., F.S.)

The bill removes discretion for the court to decide whether to modify an alimony award based upon a supportive relationship between an obligee and a third party.

The bill authorizes an obligee in a supportive relationship to show by clear and convincing evidence that his or her long-term need has not reduced.

Retirement (s. 61.14(12), F.S.)

Currently, the event of retirement alone does not change the continuation of alimony, unless the obligor can demonstrate a concurrent substantial change in circumstance. The bill defines as a substantial change in circumstance, that an obligor has reached reasonable retirement age; has retired; and has no intent to return to work.

When an obligor retires before normal retirement age, the court must consider whether the retirement age was reasonable, based on the obligor's age, health, work, motivation to retire, and normal retirement age for that type of work.

An obligor may file a petition for termination or modification of alimony in advance of a retirement date.

Parenting and Equal Time-sharing (s. 61.13(2)(c), F.S.)

This bill provides that equal time-sharing with a minor child is in the best interests of the child unless:

- A parent has a history of domestic violence or is otherwise dangerous to a child;
- Clear and convincing evidence of extenuating circumstances justify a departure as documented by a court;
- A parent is incarcerated;
- Distance between parental residences makes equal time-sharing impracticable; or
- A parent does not request at least 50 percent time-sharing.

This provision related to equal time-sharing applies prospectively to initial final custody determinations made after the effective date of the bill.

Adjudication of Issues Separate from Dissolution of Marriage (s. 61.19(2), F.S.)

This bill limits the court's ability to reserve jurisdiction for a separate adjudication of issues after entry of a final judgment in a dissolution of marriage case.

Effective Date and Retroactive Application of Bill (Sections 9 and 10)

The bill expressly provides that the revised criteria for alimony are a substantial change in circumstances. The bill authorizes an obligor to seek the modification of a qualifying alimony award based on the revised criteria.

An award based on a settlement may be modified if the length of the marriage was 15 years or less and the duration of the award exceeds the length of the marriage. Awards based on a settlement which do not satisfy this criteria may be modified if the obligor proves by clear and convincing evidence that the agreement was not voluntary, was obtained through fraud, duress, coercion, overreaching, or involuntariness or, under the circumstances, the agreement was unconscionable.

However, an alimony award based on a settlement agreement that is expressly nonmodifiable may not be modified as a result of the bill.

The bill provides a schedule for obligors to file modification actions based on length of their marriages.

The bill takes effect July 1, 2013.

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:

Unlawful Impairment of Contract

The bill applies retroactively to premarital agreements and marital settlement agreements incorporated into a judgment or other post nuptial agreements executed before the effective date of the bill. However, the power of the legislature to provide for the retroactive application of laws is restricted by Article I, s. 10, of the Florida Constitution which provides, in part: "No … ex post facto law or law impairing the obligation of contracts shall be passed." As such, the bill may violate Article I, s. 10 of the Florida Constitution.

Premarital Agreements

It is well-settled that premarital agreements are contracts.[37]

> Formerly, premarital agreements providing for a division of property and alimony … were considered as being made in contemplation of divorce and therefore void as against public policy. In recent years, many courts have abandoned the view that premarital agreements are void as against public policy; this change has resulted from a recognition of the increasing number of divorces and from the growing belief that the public policy favoring enduring marriages may be fostered rather than frustrated by allowing the

[37] 7 Am. Jur. *Proof of Facts*, 3d 581 (Originally published in 1990).

> parties to determine by contract their expectations as to property division and support in the event of the dissolution of the marriage.[38]

Florida law refers to premarital agreements as contracts, expressly provides that agreements do not require consideration, and provides the same bases for unenforceability of premarital agreements as other forms of contract.[39]

Postnuptial Agreements

Courts treat postnuptial agreements as contracts.[40]

Marital Settlement Agreements (MSA)

Likewise, courts consider as contracts marital settlement agreements incorporated into final judgments in dissolution of marriage cases. Courts interpret challenges to MSAs on the same basis as other forms of contract.[41] "A marital settlement agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract."[42]

Separation of Powers

Article II, section 3 of the Florida Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The retroactive application of this bill may be challenged on the basis that the bill would have the impact of undoing final judgments entered into by the judicial branch.[43]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[38] *Id*.
[39] Section 61.079(5) and (7), F.S.
[40] Where MSA terms are clear and unambiguous, the court must glean party intent from the four corners of the document. (*Macleod v. Macleod*, 82 So. 3d 147, 149 (Fla. 4th DCA 2012).
[41] The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 2013 WL 264190, 2-3 (Fla. 1st DCA 2013)). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v. Riera*, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012)).
[42] *Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011).
[43] *Bush v. Schiavo*, 885 So. 2d 321, 332, 337 (Fla. 2004). "It is without question an invasion of the authority of the judicial branch for the Legislature to pass a law that allows the executive branch to interfere with the final judicial determination in a case. The continuing vitality of our system of separation of powers precludes the other two branches from nullifying the judicial branch's final orders."

B. Private Sector Impact:

Alimony obligors may benefit from the provisions of this bill. Alimony recipients may be adversely affected by the changes in the bill.

C. Government Sector Impact:

To the extent that the retroactive application of this bill creates an opening for modification or termination of alimony, judicial workload may increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Rules on March 21, 2013:
The committee substitute:

- Establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding.
- Authorizes a court to require a party to a divorce to provide security for installment payments of assets that were equitably distributed.
- Requires a court to impose interest charges or otherwise recognize the time value of money in determining the amount of installment payments.
- Extends by 2 years, to 12 years, the length of time that a marriage qualifies as a short-term marriage.
- Provides that a party seeking bridge-the-gap or rehabilitative alimony can rebut the presumption against an alimony award for a short-term marriage upon a showing of need by a preponderance of the evidence.
- Removes language from the bill which provided for alimony awards to automatically terminate upon the reaching of the durational limits or the obligor's normal retirement age for social security retirement benefits.
- Authorizes a person to oppose the imputation of income if the person is disabled, consistent with standards of the Social Security Administration.
- Revises language providing for equal time-sharing of minor children to reduce proof required to establish domestic violence as a basis for departure.
- Provides that an obligor's remarriage or cohabitation is not a basis for the court to modify alimony, unless an obligee establishes exceptional circumstances.

- Revises the event of reaching normal retirement age from constituting a singular basis for a substantial change in circumstances in alimony modification, to one of several factors that the obligor has reached a reasonable retirement age.
- Provides that an obligee will not have to show under a clear and convincing standard, a need for continued alimony upon an obligor's retirement, and instead, the court can makes findings of fact justifying continuation of alimony at the present rate.
- Revises the requirements for existing awards to qualify for modification as the result of the bill.
- Refers to an obligor's income, rather than "net income," for the purposes of the percentage of an obligor's income that may be awarded as alimony.
- Changes the schedule for modification filings to allow a filing upon the effective date of the bill or later for an obligor subject to alimony for 15 years or longer; from July 1, 2014 for an obligor subject to alimony for at least 8 years; and from July 1, 2015 for an obligor subject to alimony for less than 8 years.

CS by Judiciary on March 12, 2013:
The committee substitute:

- Deletes a sentence which appeared to prohibit the award of alimony in any action other than a proceeding for dissolution of marriage.
- Provides that alimony automatically terminates on the obligor's, rather than the obligee's normal retirement age.
- Expands the circumstances that justify an alimony award having a duration of longer than 50 percent of the length of the marriage. Under the underlying bill, a party must prove the existence of exceptional circumstances. Under the committee substitute, a party need only prove the existence of circumstances.
- Provides a presumption, to apply prospectively, in favor of equal time-sharing for parents of minor children unless a parent has a history of violence or is otherwise dangerous to a child; a parent is incarcerated; the distance between residences makes equal time-sharing impracticable; or a parent does not request at least 50 percent time-sharing. The court may provide written findings for a departure from equal time-sharing in the presence of extenuating circumstances.
- Clarifies that the retroactive application of the bill does not apply to marital settlement agreements that are expressly nonmodifiable.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2013	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or


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her answer or by motion~~,~~ and the answer or motion is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~.

Section 2. Paragraph (a) of subsection (6) and subsection (10) of section 61.075, Florida Statutes, are amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting ~~either~~ from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

c. The paydown of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution shall be determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.

(I) The passive appreciation shall be determined by subtracting the gross value of the property on the date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage, pursuant to sub-subparagraph b.,

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and less any additional encumbrances secured by the property during the marriage in excess of the first note and mortgage on which principal is paid from marital funds.

(II) The coverture fraction shall consist of a numerator, defined as the total paydown of principal from marital funds of all notes and mortgages secured by the property during the marriage, and a denominator, defined as the value of the subject real property on the date of the marriage, the date of acquisition of the property, or the date the property was encumbered by the first note and mortgage on which principal was paid from marital funds, whichever is later.

(III) The passive appreciation shall be multiplied by the coverture fraction to determine the marital portion of the passive appreciation in the property.

(IV) The total marital portion of the property shall consist of the marital portion of the passive appreciation, pursuant to subparagraph 3., the mortgage principal paid during the marriage from marital funds, and any active appreciation of the property, pursuant to sub-subparagraph b., not to exceed the total net equity in the property at the date of valuation.

(V) The court shall apply this formula unless a party shows circumstances sufficient to establish that application of the formula would be inequitable under the facts presented.

d.~~c.~~ Interspousal gifts during the marriage.

e.~~d.~~ All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the

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entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

(10)(a) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

(b) If installment payments are ordered, the court may require security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If security or interest is required, the court shall make written findings relating to any deferred payments, the amount of any security required, and the interest. This subsection does not preclude the application of chapter 55 to any subsequent default.

Section 3. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—


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

(a) "Alimony" means a court-ordered payment of support by an obligor spouse to an obligee spouse.

(b) "Long-term marriage" means a marriage having a duration of 20 years or more, as measured from the date of the marriage to the date of filing the petition for dissolution.

(c) "Mid-term marriage" means a marriage having a duration of more than 12 years but less than 20 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(d) "Net income" means net income as determined in accordance with s. 61.30.

(e) "Short-term marriage" means a marriage having a duration equal to or less than 12 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(2)(a) ~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which it is awarded. The court may award only a combination of forms of alimony to provide greater economic assistance in order to allow

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the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either party ~~spouse~~ and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

(d) In all dissolution actions, the court shall include written findings of fact relative to the factors enumerated in subsection (3) ~~(2)~~ supporting an award or denial of alimony.

(3)~~(2)~~ The party seeking alimony has the burden of proof of demonstrating a need for alimony in accordance with subsection (8) and that the other party has the ability to pay alimony. In determining whether to award alimony ~~or maintenance~~, the court shall ~~first~~ make, in writing, a specific factual determination as to whether the other ~~either~~ party ~~has an actual need for alimony or maintenance and whether either party~~ has the ability to pay alimony ~~or maintenance~~. If the court finds that the ~~a~~ party seeking alimony has met its burden of proof in demonstrating a need for alimony ~~or maintenance~~ and that the other party has the ability to pay alimony ~~or maintenance~~, then in determining the proper type and amount of alimony ~~or maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall consider all relevant factors, including~~, but not limited to~~:

~~(a) The standard of living established during the marriage.~~

(a)~~(b)~~ The duration of the marriage.

(b)~~(c)~~ The age and the physical and emotional condition of each party.

(c)~~(d)~~ The financial resources of each party, including the portion of nonmarital assets that were relied upon by the parties during the marriage and the marital assets and liabilities distributed to each.

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(d) ~~(e)~~ The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(e) ~~(f)~~ The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(f) ~~(g)~~ The responsibilities each party will have with regard to any minor children that the parties ~~they~~ have in common.

(g) ~~(h)~~ The tax treatment and consequences to both parties of an ~~any~~ alimony award, which must be consistent with applicable state and federal tax laws and may include ~~including~~ the designation of all or a portion of the payment as a nontaxable, nondeductible payment.

(h) ~~(i)~~ All sources of income available to either party, including income available to either party through investments of any asset held by that party which was acquired during the marriage or acquired outside the marriage and relied upon during the marriage.

(i) The needs and necessities of life after dissolution of marriage, taking into account the lifestyle of the parties during the marriage but subject to the presumption in paragraph (j).

(j) The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the dissolution of marriage than the

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standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(k) ~~(j)~~ Any other factor necessary to do equity and justice between the parties, if that factor is specifically identified in the award with findings of fact justifying the application of the factor.

(4) ~~(3)~~ To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy that may be decreasing or another form of term life insurance at the option of the obligor or a bond, or to otherwise secure such alimony award with any other assets that ~~which~~ may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event that the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~


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(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) An award of rehabilitative alimony may be modified or terminated only during the rehabilitative period in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

(7) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time following a short-term, mid-term, or long-term marriage ~~of short or moderate duration or following a marriage~~

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~~of long duration if there is no ongoing need for support on a permanent basis~~. When awarding durational alimony, the court must make written findings that an award of another form of alimony or a combination of the other forms of alimony is not appropriate. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony shall ~~may~~ be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage, unless the party seeking alimony proves by a preponderance of the evidence the circumstances justifying the need for a longer award of alimony, which circumstances must be set out in writing by the court ~~the length of the marriage~~.

(8)(a) There is a rebuttable presumption against awarding alimony for a short-term marriage. A party seeking bridge-the-gap or rehabilitative alimony may overcome this presumption by demonstrating by a preponderance of the evidence a need for alimony. A party seeking durational alimony may overcome this presumption by demonstrating by clear and convincing evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly award of alimony that may not exceed 20 percent of the obligor's monthly income.

(b) There is no presumption in favor of either party to an award of alimony for a mid-term marriage. A party seeking such

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alimony must prove by a preponderance of the evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 30 percent of the obligor's monthly income.

(c) There is a rebuttable presumption in favor of awarding alimony for a long-term marriage. A party against whom alimony is sought may overcome this presumption by demonstrating by clear and convincing evidence that there is no need for alimony. If the court finds that the party against whom alimony is sought fails to meet its burden to demonstrate that there is no need for alimony and that the party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 33 percent of the obligor's monthly income.

(9) The court may order alimony exceeding the monthly income limits established in subsection (8) if the court determines, in accordance with the factors in subsection (3), that there is a need for additional alimony, which determination must be set out in writing. ~~Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.~~ ~~Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors~~

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~~set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(10) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution is not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony, in addition to all other requirements of this section.

(11) ~~(9)~~ Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party. Except in the case of a long-term marriage, in awarding alimony, the court shall impute income to the obligor and obligee as follows:

(a) In the case of the obligor, social security retirement benefits may not be imputed to the obligor, as demonstrated by a social security retirement benefits entitlement letter.

(b) In the case of the obligee, if the obligee:

1. Is unemployed at the time the petition is filed and has been unemployed for less than 1 year before the time of the filing of the petition, the obligee's monthly net income shall

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be imputed at 90 percent of the obligee's prior monthly net income.

2. Is unemployed at the time the petition is filed and has been unemployed for at least 1 year but less than 2 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 80 percent of the obligee's prior monthly net income.

3. Is unemployed at the time the petition is filed and has been unemployed for at least 2 years but less than 3 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 70 percent of the obligee's prior monthly net income.

4. Is unemployed at the time the petition is filed and has been unemployed for at least 3 years but less than 4 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 60 percent of the obligee's prior monthly net income.

5. Is unemployed at the time the petition is filed and has been unemployed for at least 4 years but less than 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 50 percent of the obligee's prior monthly net income.

6. Is unemployed at the time the petition is filed and has been unemployed for at least 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 40 percent of the obligee's prior monthly net income, or the monthly net income of a minimum wage earner at the time of the filing of the petition, whichever is greater.

7. Proves by a preponderance of the evidence that he or she

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does not have the ability to earn the imputed income through reasonable means, the court shall reduce the imputation of income specified in this paragraph. If the obligee alleges that a physical disability has impaired his or her ability to earn the imputed income, such disability must meet the definition of disability as determined by the Social Security Administration. ~~The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(12)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments

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need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

Section 4. Section 61.09, Florida Statutes, is amended to read:

61.09 Alimony and child support unconnected with dissolution.—If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support may apply to the court for alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper. Alimony awarded under this section shall be calculated in accordance with s. 61.08.

Section 5. Paragraph (c) of subsection (2) of section

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61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child. Equal time-sharing with a minor child by both parents is in the best interest of the child unless the court finds that:

a. The safety, well-being, and physical, mental, and emotional health of the child would be endangered by equal time-sharing, that visitation would be presumed detrimental consistent with s. 39.0139(3), or that supervised visitation is appropriate, if any is appropriate;

b. Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing and the court makes written findings justifying the departure from

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equal time-sharing;

c. A parent is incarcerated;

d. The distance between parental residences makes equal time-sharing impracticable;

e. A parent does not request at least 50-percent time-sharing;

f. A permanent injunction has been entered or is warranted against a parent or household member relating to contact between the subject of the injunction and the parent or household member; or

g. Domestic violence, as defined in s. 741.28, has occurred.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best

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protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 6. The amendments made by this act to s. 61.13,

Florida Statutes, providing for equal time-sharing, apply prospectively to initial final custody orders made on or after July 1, 2013. The amendments do not constitute a substantial change in circumstances that warrant the modification of a final custody order entered before July 1, 2013.

Section 7. Subsection (1) of section 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are added to subsection (11) of that section, and subsection (12) is added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order terminating, decreasing, or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming


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the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by terminating, increasing, or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. If the court has determined that an existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and that such need continues to exist, an alimony order shall be modified upward upon a showing by clear and convincing evidence of a permanently increased ability to pay alimony. Clear and convincing evidence must include, but need not be limited to, federal tax returns. An increase in an obligor's income may not be considered permanent in nature unless the increase has been maintained without interruption for at least 2 years, taking into account the obligor's ability to sustain his or her income.

2.~~1.~~ Notwithstanding subparagraph 1., the court shall ~~may~~ reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship has existed between the obligee and another ~~a~~ person, except upon a showing by clear and convincing evidence by the obligee that his or her long-term need for alimony, taking into account the totality of

the circumstances, has not been reduced by the supportive relationship ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.

3.~~2.~~ In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has

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performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

4.~~3.~~ This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of ~~the provisions of~~ this paragraph.

5. There is a rebuttable presumption that any modification

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or termination of an alimony award is retroactive to the date of the filing of the petition. In an action under this section, if it is determined that the obligee unnecessarily or unreasonably litigated the underlying petition for modification or termination, the court may award the obligor his or her reasonable attorney fees and costs pursuant to s. 61.16 and applicable case law.

(c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(d) The department may ~~shall have authority to~~ adopt rules to administer ~~implement~~ this section.

(11)

(c) If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the court finds the obligor has the ability to pay the modified alimony award, the existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and such need continues to exist.

(d) An obligor’s subsequent remarriage or cohabitation does not constitute a basis for a modification of alimony. The income and assets of the obligor’s subsequent spouse or person with whom the obligor resides is not relevant in a modification


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action except under exceptional circumstances.

(12) The fact that an obligor has reached a reasonable retirement age for his or her profession, has retired, and has no intent to return to work shall be considered a substantial change in circumstances as a matter of law. In determining whether the obligor's retirement age is reasonable, the court shall consider the obligor's:

(a) Age.

(b) Health.

(c) Motivation for retirement.

(d) Type of work.

(e) Normal retirement age for that type of work.

In anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the retirement date. The court shall terminate or modify the alimony award based on the circumstances of the parties after retirement of the obligor and based on the factors in s. 61.08(2), unless the court makes findings of fact that a termination or modification of an alimony award is not warranted.

Section 8. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage, ~~;~~ but the court, on a showing that injustice would result from this

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delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2)(a) During the first 180 days after the date of service of the original petition for dissolution of marriage, the court may not grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues unless the court makes written findings that there are exceptional circumstances that make the use of this process clearly necessary to protect the parties or their children and that granting a final dissolution will not cause irreparable harm to either party or the children. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. The desire of one party to remarry does not justify the use of this process.

(b) If more than 180 days have elapsed after the date of service of the original petition for dissolution of marriage, the court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues only if the court enters temporary orders necessary to protect the parties and their children, which orders remain effective until such time as all other issues can be adjudicated by the court, and makes a written finding that no irreparable harm will result from granting a final dissolution.

(c) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will

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result from granting a final dissolution, the court shall, upon request of either party, immediately grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

(d) The temporary orders necessary to protect the parties and their children entered before granting a dissolution of marriage without an adjudication of all substantive issues may include, but are not limited to, temporary orders that:

1. Restrict the sale or disposition of property.

2. Protect and preserve the marital assets.

3. Establish temporary support.

4. Provide for maintenance of health insurance.

5. Provide for maintenance of life insurance.

(e) The court is not required to enter temporary orders to protect the parties and their children if the court enters a final judgment of dissolution of marriage that adjudicates substantially all of the substantive issues between the parties but reserves jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorney fees and costs.

Section 9. (1)(a) The amendments to chapter 61, Florida Statutes, made by this act apply to:

1. Final judgments of alimony awards entered before July 1, 2013.

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2. Final orders entered before July 1, 2013, that incorporate an agreement between the parties for alimony, if the duration of the marriage was equal to or less than 15 years and the duration of the alimony agreement exceeds the duration of the marriage.

(b) For such judgments or orders, the amendments to chapter 61, Florida Statutes, shall constitute a substantial change in circumstances for which an obligor may seek, in accordance with s. 61.14, Florida Statutes, a modification of the amount or duration of alimony.

(2)(a) For final orders entered before July 1, 2013 that incorporate an agreement between the parties for alimony, but otherwise do not meet the criteria set forth in subparagraph (1)(a)2., the amendments to chapter 61, Florida Statutes, made by this act shall apply if the obligor proves, by clear and convincing evidence, that:

1. The obligor did not execute the agreement voluntarily;

2. The agreement was the product of fraud, duress, coercion, or overreaching; or

3. The agreement was unconscionable when it was executed and, before execution of the agreement, the obligor:

a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.

b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond disclosure provided.

c. Did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

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(b) For such orders, the amendments to chapter 61, Florida Statutes, shall constitute a substantial change in circumstances for which an obligor may seek, in accordance with s. 61.14, Florida Statutes, a modification of the amount or duration of alimony.

(3) Final judgments and orders for which the amendments to chapter 61, Florida Statutes, constitute a substantial change in circumstances under subsection (1) and (2) may be the subject of a modification action according to the following schedule:

(a) An obligor who is subject to alimony of 15 years or more may file a modification action on or after July 1, 2013.

(b) An obligor who is subject to alimony of 8 years of more, but less than 15 years, may file a modification action on or after July 1, 2014.

(c) An obligor who is subject to alimony of less than 8 years may file a modification action on or after July 1, 2015.

Section 10. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to family law; amending s. 61.071, F.S.; requiring that alimony pendente lite be calculated in accordance with s. 61.08, F.S.; amending s. 61.075, F.S.; redefining the term "marital assets and liabilities" for purposes of equitable distribution in dissolution of marriage actions;

providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances; providing formulas and guidelines for determining the amount of such passive appreciation; requiring security and interest relating to the installment payment of such assets; providing exceptions; permitting the court to provide written findings regarding any installment payments; amending s. 61.08, F.S.; defining terms; providing for the priority of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; providing that the party seeking alimony has the burden of proof of demonstrating a need for alimony and that the other party has the ability to pay alimony; requiring the court to consider specified relevant factors when determining the proper type and amount of alimony; revising provisions relating to the protection of awards of alimony; revising provisions for an award of durational alimony; specifying criteria related to the rebuttable presumption to award or not to award alimony; deleting a provision authorizing permanent alimony; providing for retirement of a party against whom alimony is sought; providing for imputation of income to the obligor or obligee in certain

circumstances; amending s. 61.09, F.S.; providing for the calculation of alimony; amending s. 61.13, F.S.; establishing a presumption that it is in the best interest of the child for the court to order equal time-sharing for each minor child; providing exceptions; providing prospective applicability of the presumption; amending s. 61.14, F.S.; authorizing a party to apply for an order to terminate the amount of support, maintenance, or alimony; requiring that an alimony order be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony by the other party; prohibiting an increase in an obligor's income from being considered permanent in nature until it has been maintained for a specified period without interruption; providing an exemption from the reduction or termination of an alimony award in certain circumstances; providing that there is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition; providing for an award of attorney fees and costs if it is determined that an obligee unnecessarily or unreasonably litigates a petition for modification or termination of an alimony award; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified because of the later modification or termination of child support payments; providing that an obligor's

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subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that income and assets of obligor's subsequent spouse or person with whom the obligor is residing are generally not relevant to modification; providing that the attaining of retirement age is a substantial change in circumstances; requiring the court to consider certain factors in determining whether the obligor's retirement is reasonable; requiring a court to terminate or reduce an alimony award based on certain factors; amending s. 61.19, F.S.; authorizing separate adjudication of issues in a dissolution of marriage case in certain circumstances; providing for temporary orders necessary to protect the parties and their children; providing for retroactive application of the act to alimony awards entered before July 1, 2013; providing an exception; providing allowable dates for the modification of such awards; providing an effective date.


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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or

her answer or by motion~~,~~ and the answer or motion is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~.

Section 2. Paragraph (a) of subsection (6) and subsection (10) of section 61.075, Florida Statutes, are amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting ~~either~~ from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

c. The paydown of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution shall be determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.

(I) The passive appreciation shall be determined by subtracting the gross value of the property on the date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage, pursuant to sub-subparagraph b.,

and less any additional encumbrances secured by the property during the marriage in excess of the first note and mortgage on which principal is paid from marital funds.

(II) The coverture fraction shall consist of a numerator, defined as the total paydown of principal from marital funds of all notes and mortgages secured by the property during the marriage, and a denominator, defined as the value of the subject real property on the date of the marriage, the date of acquisition of the property, or the date the property was encumbered by the first note and mortgage on which principal was paid from marital funds, whichever is later.

(III) The passive appreciation shall be multiplied by the coverture fraction to determine the marital portion of the passive appreciation in the property.

(IV) The total marital portion of the property shall consist of the marital portion of the passive appreciation, pursuant to subparagraph 3., the mortgage principal paid during the marriage from marital funds, and any active appreciation of the property, pursuant to sub-subparagraph b., not to exceed the total net equity in the property at the date of valuation.

(V) The court shall apply this formula unless a party shows circumstances sufficient to establish that application of the formula would be inequitable under the facts presented.

d.~~c.~~ Interspousal gifts during the marriage.

e.~~d.~~ All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the

entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

(10)(a) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

(b) If installment payments are ordered, the court may require security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If security or interest is required, the court shall make written findings relating to any deferred payments, the amount of any security required, and the interest. This subsection does not preclude the application of chapter 55 to any subsequent default.

Section 3. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

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

(a) "Alimony" means a court-ordered payment of support by an obligor spouse to an obligee spouse.

(b) "Long-term marriage" means a marriage having a duration of 20 years or more, as measured from the date of the marriage to the date of filing the petition for dissolution.

(c) "Mid-term marriage" means a marriage having a duration of more than 12 years but less than 20 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(d) "Net income" means net income as determined in accordance with s. 61.30.

(e) "Short-term marriage" means a marriage having a duration equal to or less than 12 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(2)(a) ~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which it is awarded. The court may award only a combination of forms of alimony to provide greater economic assistance in order to allow

the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either party ~~spouse~~ and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

(d) In all dissolution actions, the court shall include written findings of fact relative to the factors enumerated in subsection (3) ~~(2)~~ supporting an award or denial of alimony.

(3)~~(2)~~ The party seeking alimony has the burden of proof of demonstrating a need for alimony in accordance with subsection (8) and that the other party has the ability to pay alimony. In determining whether to award alimony ~~or maintenance~~, the court shall ~~first~~ make, in writing, a specific factual determination as to whether the other ~~either~~ party ~~has an actual need for alimony or maintenance and whether either party~~ has the ability to pay alimony ~~or maintenance~~. If the court finds that the ~~a~~ party seeking alimony has met its burden of proof in demonstrating a need for alimony ~~or maintenance~~ and that the other party has the ability to pay alimony ~~or maintenance~~, then in determining the proper type and amount of alimony ~~or maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall consider all relevant factors, including~~, but not limited to~~:

~~(a) The standard of living established during the marriage.~~

(a)~~(b)~~ The duration of the marriage.

(b)~~(c)~~ The age and the physical and emotional condition of each party.

(c)~~(d)~~ The financial resources of each party, including the portion of nonmarital assets that were relied upon by the parties during the marriage and the marital assets and liabilities distributed to each.

(d) ~~(e)~~ The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(e) ~~(f)~~ The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(f) ~~(g)~~ The responsibilities each party will have with regard to any minor children that the parties ~~they~~ have in common.

(g) ~~(h)~~ The tax treatment and consequences to both parties of an ~~any~~ alimony award, which must be consistent with applicable state and federal tax laws and may include ~~including~~ the designation of all or a portion of the payment as a nontaxable, nondeductible payment.

(h) ~~(i)~~ All sources of income available to either party, including income available to either party through investments of any asset held by that party which was acquired during the marriage or acquired outside the marriage and relied upon during the marriage.

(i) The needs and necessities of life after dissolution of marriage, taking into account the lifestyle of the parties during the marriage but subject to the presumption in paragraph (j).

(j) The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the dissolution of marriage than the

standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(k) ~~(j)~~ Any other factor necessary to do equity and justice between the parties, if that factor is specifically identified in the award with findings of fact justifying the application of the factor.

(4) ~~(3)~~ To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy that may be decreasing or another form of term life insurance at the option of the obligor or a bond, or to otherwise secure such alimony award with any other assets that ~~which~~ may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event that the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) An award of rehabilitative alimony may be modified or terminated only during the rehabilitative period in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

(7) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time following a short-term, mid-term, or long-term marriage ~~of short or moderate duration or following a marriage~~

~~of long duration if there is no ongoing need for support on a permanent basis~~. When awarding durational alimony, the court must make written findings that an award of another form of alimony or a combination of the other forms of alimony is not appropriate. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony shall ~~may~~ be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage, unless the party seeking alimony proves by a preponderance of the evidence the circumstances justifying the need for a longer award of alimony, which circumstances must be set out in writing by the court ~~the length of the marriage~~.

(8)(a) There is a rebuttable presumption against awarding alimony for a short-term marriage. A party seeking bridge-the-gap or rehabilitative alimony may overcome this presumption by demonstrating by a preponderance of the evidence a need for alimony. A party seeking durational alimony may overcome this presumption by demonstrating by clear and convincing evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly award of alimony that may not exceed 20 percent of the obligor’s monthly income.

(b) There is no presumption in favor of either party to an award of alimony for a mid-term marriage. A party seeking such

alimony must prove by a preponderance of the evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 30 percent of the obligor's monthly income.

(c) There is a rebuttable presumption in favor of awarding alimony for a long-term marriage. A party against whom alimony is sought may overcome this presumption by demonstrating by clear and convincing evidence that there is no need for alimony. If the court finds that the party against whom alimony is sought fails to meet its burden to demonstrate that there is no need for alimony and that the party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 33 percent of the obligor's monthly income.

(9) The court may order alimony exceeding the monthly income limits established in subsection (8) if the court determines, in accordance with the factors in subsection (3), that there is a need for additional alimony, which determination must be set out in writing ~~Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage~~. ~~Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors~~

~~set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(10) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution is not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony, in addition to all other requirements of this section.

(11) ~~(9)~~ Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party. Except in the case of a long-term marriage, in awarding alimony, the court shall impute income to the obligor and obligee as follows:

(a) In the case of the obligor, social security retirement benefits may not be imputed to the obligor, as demonstrated by a social security retirement benefits entitlement letter.

(b) In the case of the obligee, if the obligee:

1. Is unemployed at the time the petition is filed and has been unemployed for less than 1 year before the time of the filing of the petition, the obligee's monthly net income shall

be imputed at 90 percent of the obligee's prior monthly net income.

2. Is unemployed at the time the petition is filed and has been unemployed for at least 1 year but less than 2 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 80 percent of the obligee's prior monthly net income.

3. Is unemployed at the time the petition is filed and has been unemployed for at least 2 years but less than 3 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 70 percent of the obligee's prior monthly net income.

4. Is unemployed at the time the petition is filed and has been unemployed for at least 3 years but less than 4 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 60 percent of the obligee's prior monthly net income.

5. Is unemployed at the time the petition is filed and has been unemployed for at least 4 years but less than 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 50 percent of the obligee's prior monthly net income.

6. Is unemployed at the time the petition is filed and has been unemployed for at least 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 40 percent of the obligee's prior monthly net income, or the monthly net income of a minimum wage earner at the time of the filing of the petition, whichever is greater.

7. Proves by a preponderance of the evidence that he or she

does not have the ability to earn the imputed income through reasonable means, the court shall reduce the imputation of income specified in this paragraph. If the obligee alleges that a physical disability has impaired his or her ability to earn the imputed income, such disability must meet the definition of disability as determined by the Social Security Administration. ~~The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(12)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments

need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

Section 4. Section 61.09, Florida Statutes, is amended to read:

61.09 Alimony and child support unconnected with dissolution.—If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support may apply to the court for alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper. Alimony awarded under this section shall be calculated in accordance with s. 61.08.

Section 5. Paragraph (c) of subsection (2) of section

61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child. Equal time-sharing with a minor child by both parents is in the best interest of the child unless the court finds that:

a. The safety, well-being, and physical, mental, and emotional health of the child would be endangered by equal time-sharing, that visitation would be presumed detrimental consistent with s. 39.0139(3), or that supervised visitation is appropriate, if any is appropriate;

b. Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing and the court makes written findings justifying the departure from

equal time-sharing;

c. A parent is incarcerated;

d. The distance between parental residences makes equal time-sharing impracticable;

e. A parent does not request at least 50-percent time-sharing;

f. A permanent injunction has been entered or is warranted against a parent or household member relating to contact between the subject of the injunction and the parent or household member; or

g. Domestic violence, as defined in s. 741.28, has occurred.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best

protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 6. The amendments made by this act to s. 61.13,

Florida Statutes, providing for equal time-sharing, apply prospectively to initial final custody orders made on or after July 1, 2013. The amendments do not constitute a substantial change in circumstances that warrant the modification of a final custody order entered before July 1, 2013.

Section 7. Subsection (1) of section 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are added to subsection (11) of that section, and subsection (12) is added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order terminating, decreasing, or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming

the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by terminating, increasing, or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. If the court has determined that an existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and that such need continues to exist, an alimony order shall be modified upward upon a showing by clear and convincing evidence of a permanently increased ability to pay alimony. Clear and convincing evidence must include, but need not be limited to, federal tax returns. An increase in an obligor's income may not be considered permanent in nature unless the increase has been maintained without interruption for at least 2 years, taking into account the obligor's ability to sustain his or her income.

2.~~1.~~ Notwithstanding subparagraph 1., the court shall ~~may~~ reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship has existed between the obligee and another ~~a~~ person, except upon a showing by clear and convincing evidence by the obligee that his or her long-term need for alimony, taking into account the totality of

the circumstances, has not been reduced by the supportive relationship ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.

3.~~2.~~ In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has

performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

4.~~3.~~ This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of ~~the provisions of~~ this paragraph.

5. There is a rebuttable presumption that any modification

or termination of an alimony award is retroactive to the date of the filing of the petition. In an action under this section, if it is determined that the obligee unnecessarily or unreasonably litigated the underlying petition for modification or termination, the court may award the obligor his or her reasonable attorney fees and costs pursuant to s. 61.16 and applicable case law.

(c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(d) The department may ~~shall have authority to~~ adopt rules to administer ~~implement~~ this section.

(11)

(c) If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the court finds the obligor has the ability to pay the modified alimony award, the existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and such need continues to exist.

(d) An obligor’s subsequent remarriage or cohabitation does not constitute a basis for a modification of alimony. The income and assets of the obligor’s subsequent spouse or person with whom the obligor resides is not relevant in a modification

action except under exceptional circumstances.

(12) The fact that an obligor has reached a reasonable retirement age for his or her profession, has retired, and has no intent to return to work shall be considered a substantial change in circumstances as a matter of law. In determining whether the obligor's retirement age is reasonable, the court shall consider the obligor's:

(a) Age.

(b) Health.

(c) Motivation for retirement.

(d) Type of work.

(e) Normal retirement age for that type of work.

In anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the retirement date. The court shall terminate or modify the alimony award based on the circumstances of the parties after retirement of the obligor and based on the factors in s. 61.08(2), unless the court makes findings of fact that a termination or modification of an alimony award is not warranted.

Section 8. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage, ~~;~~ but the court, on a showing that injustice would result from this

delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2)(a) During the first 180 days after the date of service of the original petition for dissolution of marriage, the court may not grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues unless the court makes written findings that there are exceptional circumstances that make the use of this process clearly necessary to protect the parties or their children and that granting a final dissolution will not cause irreparable harm to either party or the children. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. The desire of one party to remarry does not justify the use of this process.

(b) If more than 180 days have elapsed after the date of service of the original petition for dissolution of marriage, the court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues only if the court enters temporary orders necessary to protect the parties and their children, which orders remain effective until such time as all other issues can be adjudicated by the court, and makes a written finding that no irreparable harm will result from granting a final dissolution.

(c) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will

result from granting a final dissolution, the court shall, upon request of either party, immediately grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

(d) The temporary orders necessary to protect the parties and their children entered before granting a dissolution of marriage without an adjudication of all substantive issues may include, but are not limited to, temporary orders that:

1. Restrict the sale or disposition of property.

2. Protect and preserve the marital assets.

3. Establish temporary support.

4. Provide for maintenance of health insurance.

5. Provide for maintenance of life insurance.

(e) The court is not required to enter temporary orders to protect the parties and their children if the court enters a final judgment of dissolution of marriage that adjudicates substantially all of the substantive issues between the parties but reserves jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorney fees and costs.

Section 9. (1)(a) The amendments to chapter 61, Florida Statutes, made by this act apply to:

1. Final judgments of alimony awards entered before July 1, 2013.

2. Final orders entered before July 1, 2013, that incorporate an agreement between the parties for alimony, if the duration of the marriage was equal to or less than 15 years and the duration of the alimony agreement exceeds the duration of the marriage.

(b) For such judgments or orders, the amendments to chapter 61, Florida Statutes, shall constitute a substantial change in circumstances for which an obligor may seek, in accordance with s. 61.14, Florida Statutes, a modification of the amount or duration of alimony, except for an order incorporating an agreement that is expressly nonmodifiable.

(2)(a) For final orders entered before July 1, 2013 that incorporate an agreement between the parties for alimony, but otherwise do not meet the criteria set forth in subparagraph (1)(a)2., the amendments to chapter 61, Florida Statutes, made by this act shall apply if the obligor proves, by clear and convincing evidence, that:

1. The obligor did not execute the agreement voluntarily;

2. The agreement was the product of fraud, duress, coercion, or overreaching; or

3. The agreement was unconscionable when it was executed and, before execution of the agreement, the obligor:

a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.

b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond disclosure provided.

c. Did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of

the other party.

(b) For such orders, the amendments to chapter 61, Florida Statutes, shall constitute a substantial change in circumstances for which an obligor may seek, in accordance with s. 61.14, Florida Statutes, a modification of the amount or duration of alimony, except for an order incorporating an agreement that is expressly nonmodifiable.

(3) Final judgments and orders for which the amendments to chapter 61, Florida Statutes, constitute a substantial change in circumstances under subsection (1) and (2) may be the subject of a modification action according to the following schedule:

(a) An obligor who is subject to alimony of 15 years or more may file a modification action on or after July 1, 2013.

(b) An obligor who is subject to alimony of 8 years of more, but less than 15 years, may file a modification action on or after July 1, 2014.

(c) An obligor who is subject to alimony of less than 8 years may file a modification action on or after July 1, 2015.

Section 10. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to family law; amending s. 61.071, F.S.; requiring that alimony pendente lite be calculated in accordance with s. 61.08, F.S.; amending s. 61.075, F.S.; redefining the term "marital assets

and liabilities" for purposes of equitable distribution in dissolution of marriage actions; providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances; providing formulas and guidelines for determining the amount of such passive appreciation; requiring security and interest relating to the installment payment of such assets; providing exceptions; permitting the court to provide written findings regarding any installment payments; amending s. 61.08, F.S.; defining terms; providing for the priority of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; providing that the party seeking alimony has the burden of proof of demonstrating a need for alimony and that the other party has the ability to pay alimony; requiring the court to consider specified relevant factors when determining the proper type and amount of alimony; revising provisions relating to the protection of awards of alimony; revising provisions for an award of durational alimony; specifying criteria related to the rebuttable presumption to award or not to award alimony; deleting a provision authorizing permanent alimony; providing for retirement of a party against

whom alimony is sought; providing for imputation of income to the obligor or obligee in certain circumstances; amending s. 61.09, F.S.; providing for the calculation of alimony; amending s. 61.13, F.S.; establishing a presumption that it is in the best interest of the child for the court to order equal time-sharing for each minor child; providing exceptions; providing prospective applicability of the presumption; amending s. 61.14, F.S.; authorizing a party to apply for an order to terminate the amount of support, maintenance, or alimony; requiring that an alimony order be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony by the other party; prohibiting an increase in an obligor’s income from being considered permanent in nature until it has been maintained for a specified period without interruption; providing an exemption from the reduction or termination of an alimony award in certain circumstances; providing that there is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition; providing for an award of attorney fees and costs if it is determined that an obligee unnecessarily or unreasonably litigates a petition for modification or termination of an alimony award; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified

because of the later modification or termination of child support payments; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that income and assets of obligor's subsequent spouse or person with whom the obligor is residing are generally not relevant to modification; providing that the attaining of retirement age is a substantial change in circumstances; requiring the court to consider certain factors in determining whether the obligor's retirement is reasonable; requiring a court to terminate or reduce an alimony award based on certain factors; amending s. 61.19, F.S.; authorizing separate adjudication of issues in a dissolution of marriage case in certain circumstances; providing for temporary orders necessary to protect the parties and their children; providing for retroactive application of the act to alimony awards entered before July 1, 2013; providing an exception; providing allowable dates for the modification of such awards; providing an effective date.

790122

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2013	.	
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The Committee on Rules (Latvala and Lee) recommended the following:

Senate Amendment to Amendment (432516)

Delete line 272
and insert:

obligor's monthly net income.

By the Committee on Judiciary; and Senators Stargel, Grimsley, Richter, Thrasher, Soto, and Altman

590-02284A-13 2013718c1

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.071, F.S.; requiring that alimony pendente lite be calculated in accordance with s. 61.08, F.S.; amending s. 61.08, F.S.; defining terms; revising factors to be considered for alimony awards; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; revising factors to be considered when deciding whether to award alimony; providing that an award of alimony granted automatically terminates without further action under certain circumstances; providing that the party seeking alimony has the burden of proof of demonstrating a need for alimony and that the other party has the ability to pay alimony; requiring the court to consider specified relevant factors when determining the proper type and amount of alimony; revising provisions relating to the protection of awards of alimony; revising provisions for an award of durational alimony; specifying criteria related to the rebuttable presumption to award or not to award alimony; deleting a provision authorizing permanent alimony; requiring written findings regarding the incomes and standard of living of the parties after dissolution of marriage; amending s. 61.09, F.S.; providing for the calculation of alimony; amending 61.13, F.S.; establishing a presumption that it is in the best interests of the

590-02284A-13 2013718c1

child for the court to order equal time-sharing for each minor child; providing exceptions; providing for prospective application of the presumption in favor of equal time-sharing; amending s. 61.14, F.S.; authorizing a party to apply for an order to terminate the amount of support, maintenance, or alimony; requiring that an alimony order be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony by the other party; prohibiting an increase in an obligor's income from being considered permanent in nature until it has been maintained for a specified period without interruption; providing an exemption from the reduction or termination of an alimony award in certain circumstances; providing that there is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition; providing for an award of attorney fees and costs if it is determined that an obligee unnecessarily or unreasonably litigates a petition for modification or termination of an alimony award; revising provisions relating to the effect of a supportive relationship on an award of alimony; providing that income and assets of the obligor's spouse or the person with whom the obligor resides may not be considered in the redetermination in a modification action; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the

alimony award may not be modified because of the later modification or termination of child support payments; providing that the attaining of retirement age is a substantial change in circumstances; requiring the court to consider certain factors in determining whether the obligor's retirement is reasonable; requiring a court to terminate or reduce an alimony award based on certain factors; amending s. 61.19, F.S.; authorizing separate adjudication of issues in a dissolution of marriage case in certain circumstances; providing for retroactive application of the act to alimony awards entered before July 1, 2013; providing allowable dates for the modification of such awards; providing an effective date.

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

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion~~,~~ and the answer or motion is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money ~~therefor~~.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

(1) For purposes of this section, the term:

(a) "Alimony" means a court-ordered payment of support by an obligor to an obligee after the dissolution of a marriage.

(b) "Long-term marriage" means a marriage having a duration of 20 years or more, as measured from the date of the marriage to the date of filing the petition for dissolution.

(c) "Mid-term marriage" means a marriage having a duration of more than 10 years but less than 20 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(d) "Net income" means net income as determined in accordance with s. 61.30.

(e) "Short-term marriage" means a marriage having a duration equal to or less than 10 years, as measured from the date of the marriage to the date of filing the petition for dissolution.

(2)(a)~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including

the type of alimony and length of time for which it is awarded. The court may award only a combination of forms of alimony to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either party ~~spouse~~ and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

(d) In all dissolution actions, the court shall include written findings of fact relative to the factors enumerated in subsection (3)~~(2)~~ supporting an award or denial of alimony.

(e) An award of alimony granted under this section automatically terminates without further action of either party or the court upon the earlier of:

1. The durational limits specified in this section; or

2. The obligor's normal retirement age for social security retirement benefits.

If the obligee proves by clear and convincing evidence that the need for alimony continues to exist and the court determines that the obligor continues to have the ability to pay, the court shall issue written findings justifying an extension of alimony consistent with the provisions of this section.

(f) The clerk of the court shall, upon request, indicate in writing that an alimony obligation has terminated in accordance with paragraph (e), unless there is a pending motion before the court disputing the fulfillment of the alimony obligation.

(3)~~(2)~~ The party seeking alimony has the burden of proof of demonstrating a need for alimony in accordance with subsection (8) and that the other party has the ability to pay alimony. In

determining whether to award alimony ~~or maintenance~~, the court shall ~~first~~ make, in writing, a specific factual determination as to whether the other ~~either~~ party ~~has an actual need for alimony or maintenance and whether either party~~ has the ability to pay alimony ~~or maintenance~~. If the court finds that the ~~a~~ party seeking alimony has met its burden of proof in demonstrating a need for alimony ~~or maintenance~~ and that the other party has the ability to pay alimony ~~or maintenance~~, then in determining the proper type and amount of alimony ~~or maintenance~~ under subsections (5)-(9)~~(5) (8)~~, the court shall consider all relevant factors, including~~, but not limited to~~:

~~(a) The standard of living established during the marriage.~~

(a)~~(b)~~ The duration of the marriage.

(b)~~(c)~~ The age and the physical and emotional condition of each party.

(c)~~(d)~~ The financial resources of each party, including the portion of nonmarital assets that were relied upon by the parties during the marriage and the marital assets and liabilities distributed to each.

(d)~~(e)~~ The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(e)~~(f)~~ The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(f)~~(g)~~ The responsibilities each party will have with regard to any minor children that the parties ~~they~~ have in

common.

(g) ~~(h)~~ The tax treatment and consequences to both parties of an ~~any~~ alimony award, which must be consistent with applicable state and federal tax laws and may include ~~including~~ the designation of all or a portion of the payment as a nontaxable, nondeductible payment.

(h) ~~(i)~~ All sources of income available to either party, including income available to either party through investments of any asset held by that party which was acquired during the marriage or acquired outside the marriage and relied upon during the marriage.

(i) The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(j) Any other factor necessary to do equity and justice between the parties, if that factor is specifically identified in the award with findings of fact justifying the application of the factor.

(4) ~~(3)~~ To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a decreasing term life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that ~~which~~ may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and

awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event that the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or

credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) An award of rehabilitative alimony may be modified or terminated only during the rehabilitative period in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

(7) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time following a short-term, mid-term, or long-term marriage ~~of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. When awarding durational alimony, the court must make written findings that an award of another form of alimony or a combination of the other forms of alimony is not appropriate. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony shall ~~may~~ be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage, unless the party seeking alimony proves by clear and convincing evidence the circumstances justifying the need for a longer award of alimony, which circumstances must

be set out in writing by the court ~~the length of the marriage~~.

(8)(a) There is a rebuttable presumption against awarding alimony for a short-term marriage. A party seeking alimony may overcome this presumption by demonstrating by clear and convincing evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly award of alimony that may not exceed 20 percent of the obligor's monthly net income.

(b) There is no presumption in favor of either party to an award of alimony for a mid-term marriage. A party seeking such alimony must prove by a preponderance of the evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 30 percent of the obligor's monthly net income.

(c) There is a rebuttable presumption in favor of awarding alimony for a long-term marriage. A party against whom alimony is sought may overcome this presumption by demonstrating by clear and convincing evidence that there is no need for alimony. If the court finds that the party against whom alimony is sought fails to meet its burden to demonstrate that there is no need for alimony and that the party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 33 percent of the obligor's monthly net income.

(9) The court may order alimony exceeding the monthly net income limits established in subsection (8) if the court determines, in accordance with the factors in subsection (3),

that there is a need for additional alimony, which determination must be set out in writing. ~~Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(10) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution is not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony, in addition to all other requirements of this section.

(11) ~~(9)~~ Notwithstanding any other law, alimony may not be

awarded to a party who has a monthly net income that is equal to or more than the other party. Except in the case of a long-term marriage, in awarding alimony, the court shall impute income to the obligor and obligee as follows:

(a) In the case of the obligor, social security retirement benefits may not be imputed to the obligor, as demonstrated by a social security retirement benefits entitlement letter.

(b) In the case of the obligee, if the obligee:

1. Is unemployed at the time the petition is filed and has been unemployed for less than 1 year before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 90 percent of the obligee's prior monthly net income.

2. Is unemployed at the time the petition is filed and has been unemployed for at least 1 year but less than 2 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 80 percent of the obligee's prior monthly net income.

3. Is unemployed at the time the petition is filed and has been unemployed for at least 2 years but less than 3 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 70 percent of the obligee's prior monthly net income.

4. Is unemployed at the time the petition is filed and has been unemployed for at least 3 years but less than 4 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 60 percent of the obligee's prior monthly net income.

5. Is unemployed at the time the petition is filed and has

been unemployed for at least 4 years but less than 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 50 percent of the obligee's prior monthly net income.

6. Is unemployed at the time the petition is filed and has been unemployed for at least 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 40 percent of the obligee's prior monthly net income, or the monthly net income of a minimum wage earner at the time of the filing of the petition, whichever is greater.

7. Proves by a preponderance of the evidence that he or she does not have the ability to earn the imputed income through reasonable means, the court shall reduce the imputation of income specified in this paragraph. ~~The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(12)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless ~~the~~

~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

Section 3. Section 61.09, Florida Statutes, is amended to read:

61.09 Alimony and child support unconnected with dissolution.—If a person having the ability to contribute to the

maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support may apply to the court for alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper. Alimony awarded under this section shall be calculated in accordance with s. 61.08.

Section 4. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child. Equal time-sharing with a minor child by both parents is presumed to be in the best interests of the child unless the court finds that:

a. The safety, well-being, and physical, mental, and emotional health of the child would be endangered by equal time-sharing, that visitation would be presumed detrimental consistent with s. 39.0139(3), or that supervised visitation is appropriate, if any is appropriate;

b. Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing and the court makes written findings justifying the departure from equal time-sharing;

c. A parent is incarcerated;

d. The distance between parental residences makes equal time-sharing impracticable;

e. A parent does not request at least 50 percent time-sharing;

f. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence; or

g. A parent is subject to an injunction for protection against domestic violence.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the

child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence

injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 5. The amendment by this act to s. 61.13, Florida Statutes, which creates a presumption in favor of equal time-sharing applies prospectively to initial final custody orders made on or after July 1, 2013. The amendments do not constitute a substantial change in circumstances which warrant the modification of a final custody order entered before July 1, 2013.

Section 6. Subsection (1) of section 61.14, Florida Statutes, is amended, paragraph (c) is added to subsection (11) of that section, and subsection (12) is added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution

of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order terminating, decreasing, or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by terminating, increasing, or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. An alimony order shall be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony. Clear and convincing evidence must include, but need not limited to, federal tax returns. An increase in an obligor's income may not be considered permanent in nature unless the increase has been maintained without interruption for at least 2 years, taking into account the obligor's ability to sustain his or her income.

2.~~1.~~ Notwithstanding subparagraph 1., the court shall ~~may~~ reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and

the award of alimony, a supportive relationship has existed between the obligee and another ~~a~~ person, except upon a showing by clear and convincing evidence by the obligee that his or her long-term need for alimony, taking into account the totality of the circumstances, has not been reduced by the supportive relationship ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.

3.~~2.~~ In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited

financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

4.~~3.~~ This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it

may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

5. There is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition. In an action under this section, if it is determined that the obligee unnecessarily or unreasonably litigated the underlying petition for modification or termination, the court may award the obligor his or her reasonable attorney fees and costs pursuant to s. 61.16 and applicable case law.

(c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(d) The department may ~~shall have authority to~~ adopt rules to administer ~~implement~~ this section.

(11)

(c) If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee.

(12)(a) The fact that an obligor has reached a reasonable retirement age for his or her profession, has retired, and has

no intent to return to work, or has reached the normal retirement age for social security benefits, is considered a substantial change in circumstances as a matter of law. An obligor who has reached the normal retirement age for social security benefits shall be considered to have reached a reasonable retirement age. With regard to an obligor who has retired before the normal retirement age for social security benefits, the court shall consider the following in determining whether the obligor's retirement age is reasonable:

1. Age.

2. Health.

3. Type of work.

4. Normal retirement age for that type of work.

(b) In anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the earlier of the retirement date or the date the obligor reaches the normal retirement age for social security benefits. The court shall terminate the award or reduce the award based on the circumstances of the parties after retirement and based on the factors in s. 61.08, unless the obligee proves by clear and convincing evidence that the need for alimony at the present level continues to exist and that the obligor's ability to pay has not been diminished.

Section 7. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of

filing the original petition for dissolution of marriage, ~~,~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2)(a) During the first 180 days after the date of service of the original petition for dissolution of marriage, the court may not grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues unless the court makes written findings that there are exceptional circumstances that make the use of this process clearly necessary to protect the parties or their children and that granting a final dissolution will not cause irreparable harm to either party or the children. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. The desire of one party to remarry does not justify the use of this process.

(b) If more than 180 days have elapsed after the date of service of the original petition for dissolution of marriage, the court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues only if the court enters temporary orders necessary to protect the parties and their children, which orders remain effective until such time as all other issues can be adjudicated by the court, and makes a written finding that no irreparable harm will result from granting a final dissolution.

(c) If more than 365 days have elapsed after the date of

service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final dissolution, the court shall, upon request of either party, immediately grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

(d) The temporary orders necessary to protect the parties and their children entered before granting a dissolution of marriage without an adjudication of all substantive issues may include, but are not limited to, temporary orders that:

1. Restrict the sale or disposition of property.

2. Protect and preserve the marital assets.

3. Establish temporary support.

4. Provide for maintenance of health insurance.

5. Provide for maintenance of life insurance.

(e) The court is not required to enter temporary orders to protect the parties and their children if the court enters a final judgment of dissolution of marriage which adjudicates substantially all of the substantive issues between the parties but reserves jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorney fees and costs.

Section 8. (1) The amendments to chapter 61, Florida Statutes, made by this act apply to all initial awards of, and

agreements for, alimony entered before July 1, 2013, and to all modifications of such awards or agreements made before July 1, 2013, with the exception of agreements that are expressly nonmodifiable. Such amendments may serve as a basis to modify awards entered before July 1, 2013, or as a basis to change the amount or duration of an award existing before July 1, 2013. Such amendments also serve as a basis to modify an agreement for alimony, unless the agreement is expressly nonmodifiable, if the agreement is 25 percent or more in duration or amount than an alimony award calculated under the amendments made by this act.

(2) An obligor whose initial award or modification of such award was made before July 1, 2013, may file a modification action according to the following schedule:

(a) An obligor who was married to the alimony recipient 8 years or less may file a modification action on or after July 1, 2013.

(b) An obligor who was married to the alimony recipient 8 years or more, but less than 15 years, may file a modification action on or after July 1, 2014.

(c) An obligor who has agreed to durational alimony of less than 10 years may file a modification action on or after July 1, 2015.

(3) An obligor whose initial agreement or modification of such agreement was made before July 1, 2013, may file a modification action according to the following schedule:

(a) An obligor who has agreed to permanent alimony may file a modification action on or after July 1, 2013.

(b) An obligor who has agreed to durational alimony of 10 years or more may file a modification action on or after July 1,

2014.

(c) An obligor who has agreed to durational alimony of more than 5 years but less than 10 years may file a modification action on or after July 1, 2015.

Section 9. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic _____ Bill Number 718 *(if applicable)*

Name MIKE HARRELL Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone 513-3373
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

3/21/13
Meeting Date

Topic Alimony

Bill Number 718 *(if applicable)*

Name Elizabeth Willis

Amendment Barcode _____ *(if applicable)*

Job Title Lawyer

Address 3160 Blairstone Court
Street

Phone 877-0082

Tall Fla 32301
City *State* *Zip*

E-mail bibwillis@comcast.net

Speaking: ☐ For ☐ Against ☒ Information

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic Alimony Reform

Bill Number 718 *(if applicable)*

Name Angela Yaden

Amendment Barcode _____ *(if applicable)*

Job Title Claims Adjuster

Address 10403 Bigtree Cir W
Street

Phone 904-229-9628

City Jax State FL Zip 32257

E-mail cfjrv@allstate.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Alimony Reform

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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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)

3-21-13
Meeting Date

Topic Dissolution of Marriage

Bill Number 718 *(if applicable)*

Name Carin M. Porras

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 100 NE 3rd Ave Suite 480 *Street*

Phone 954-527-2855

Ft Lauderdale Fl 33301 *City State Zip*

E-mail carin@brydgerporras.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Family Law Section of The Florida Bar

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

3/21/13
Meeting Date

Topic SB 718 Bill Number _____ *(if applicable)*

Name Therese Kujak Amendment Barcode _____ *(if applicable)*

Job Title Homemaker / Unemployed

Address 5628 Virginia Phone 727-247-8667
Street

New Port Richey Fla 34652 E-mail tkujak5@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SE...

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic _____ Bill Number 718 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

3/21/13
Meeting Date

Topic Alimony Reform

Bill Number 718 *(if applicable)*

Name Terrance Power

Amendment Barcode _____ *(if applicable)*

Job Title Consultant

Address 2291 Sweetgrass Ct
Street
Clearwater FL 33759
City *State* *Zip*

Phone 813-781-3266

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Family Law Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/21/2013
Meeting Date

Topic ALIMONY REFORM

Bill Number 718

Name ALAN FRISHER

Amendment Barcode 432516 *(if applicable)*

Job Title PRESIDENT - FAMILY LAW REFORM

Address 7630 N. Wickham Rd
Street
Melbourne FL 32940
City *State* *Zip*

Phone 321-242-7526

E-mail ALAN.FRISHER@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA ALIMONY REFORM / FAMILY LAW REFORM, INC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

* SPEAKING ON AMENDMENT #8 of The Bill *

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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)

3/26/13
Meeting Date

Topic Acumany Reform

Bill Number 718 *(if applicable)*

Name TANYA Williams

Amendment Barcode _____ *(if applicable)*

Job Title Dentist

Address 6106 Morgan Ashley Drive *Street*

Phone 336-285-5652

Greensboro NC 27410 *City* *State* *Zip*

E-mail Picknix@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/21/13
Meeting Date

Topic Alimony Reform

Bill Number 718 *(if applicable)*

Name Jon Derrevere

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 2005 Vista Parkway #210
Street
West Palm Beach FL 33411
City *State* *Zip*

Phone 561-684-3222

E-mail jdd@derrevere law.com

Speaking: ☒ For ☐ Against ☐ Information

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/21/13
Meeting Date

Topic Alimony Reform

Bill Number 716 *(if applicable)*

Name Deborah Leff Israel

Amendment Barcode _____ *(if applicable)*

Job Title Professor of Mathematics

Address 874 Stillwater Ct.
Street

Phone 754 204 3998

Weston FL 33327
City *State* *Zip*

E-mail debbieisrael@bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Family Law Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/21/2013
Meeting Date

Topic Alimony Reform

Bill Number 718 *(if applicable)*

Name Lynn M. Britt

Amendment Barcode _____ *(if applicable)*

Job Title Certified Public Accountant

Address 5850 Hiatus Road, Suite G
Street

Tamarac Florida 33321
City *State* *Zip*

Phone 954-718-5022

E-mail lynn@cpabritt.com

Speaking: ☐ For ☐ Against ☑ Information

Representing I am a Florida citizen

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 60
INTRODUCER:	Health Policy Committee and Senate Hays
SUBJECT:	Public Records/Personal Identifying Information of Dept. of Health Personnel
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.	Naf	McVaney	GO	**Favorable**
3.	McElheney	Phelps	RC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 60 creates a public records exemption for certain personal identification and location information of:

- Current or former Department of Health (DOH) personnel whose duties include the investigation or prosecution of complaints against health care practitioners or the inspection of practitioners or facilities licensed by the DOH; and
- Spouses and children of such current or former DOH personnel.

The exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution 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 Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] 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 provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] 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)).
[5] Section 119.07(1)(a), F.S.
[6] 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 (s*ee 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).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] 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.).

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.[11] The Act 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.[12]

Public Records Exemptions for Public Employee Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.[13] Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;[14]
- Firefighters;[15]
- Justices and judges;[16]
- Local and statewide prosecuting attorneys;[17]
- Magistrates, administrative law judges, and child support hearing officers;[18]
- Local government agency and water management district human resources administrators;[19]
- Code enforcement officers;[20]
- Guardians ad litem;[21]
- Specified Department of Juvenile Justice Personnel;[22]
- Public defenders and criminal conflict and civil regional counsel;[23]
- Investigators or inspectors of the Department of Business and Professional Regulation;[24] and
- County tax collectors.[25]

Although the types of exempt information vary, the following information is exempt[26] from public records requirements for all the above-listed public employees:

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[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.
[13] *See* s. 119.071(4)(d), F.S.
[14] *See* s. 119.071(4)(d)1.a., F.S.
[15] *See* s. 119.071(4)(d)1.b., F.S.
[16] *See* s. 119.071(4)(d)1.c., F.S.
[17] *See* s. 119.071(4)(d)1.d., F.S.
[18] *See* s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.
[19] *See* s. 119.071(4)(d)1.f., F.S.
[20] *See* s. 119.071(4)(d)1.g., F.S.
[21] *See* s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.
[22] *See* s. 119.071(4)(d)1.i., F.S.
[23] *See* s. 119.071(4)(d)1.j, F.S.
[24] *See* s. 119.071(4)(d)1.k, F.S.
[25] *See* s. 119.071(4)(d)1.l, F.S.
[26] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency[27] that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.[28]

Department of Health

Regulatory and Reporting Duties

The DOH is responsible for the licensure and regulation of a variety of health care practitioners to ensure that those health care practitioners comply with the rules and standards set by the Legislature, professional boards, and the DOH.[29] Such regulation includes periodic inspections of facilities of health care practitioners.[30] The DOH may issue citations for violations of law or rule that do not pose a serious threat to patient safety or involve a standard of care violation that resulted in patient injury.[31]

The DOH also is responsible for investigating complaints against health care practitioners. It must investigate any complaint that is legally sufficient and that meets other statutory requirements,[32] and may initiate an investigation if it believes a violation of law or rule has

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).

[27] Section 119.011(2), F.S., defines "agency" to mean 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.

[28] Section 119.071(4)(d)2., F.S.

[29] *See* ss. 20.43(1)(g), 456.013(1)(a), and 456.069, F.S. Regulated professions include acupuncture; general medicine; osteopathic medicine; podiatric medicine; optometry; nursing; pharmacy; dentistry; speech-language pathology and audiology; nursing home administration; occupational therapy; athletic training; orthotists and prosthetists; massage therapy; opticianry; hearing aid specialists; physical therapy; psychology, including school psychologists; clinical social work; marriage and family therapy; mental health counseling; naturopathy; midwifery; nursing assistants; respiratory therapy; dietetics and nutrition practice; electrolysis; medical physicists; emergency medical technicians and paramedics; and radiology (*see* s. 20.43(3)(g) and 468.304, F.S.).

[30] Section 456.069, F.S., authorizes such routine inspections; the DOH's bill analysis states that DOH personnel are required to complete routine inspections (the DOH bill analysis, dated November 26, 2012, is on file with the Senate Governmental Oversight and Accountability Committee).

[31] Section 456.077, F.S.

[32] The complaint must also be signed by the complainant; however, the DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true (s. 456.073(1), F.S.).

occurred.[33] Such an investigation may result in an administrative case against the health care practitioner's license.[34]

The DOH not only conducts investigations of and prosecutes violations of regulatory laws and rules; it also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.[35]

Personal Identification and Location Information of DOH Employees

Currently, the personal identification and location information of current or former personnel of the Department of Health (DOH) whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the DOH, and that of such DOH personnel's spouses and children, is not exempt from public records requirements.

III. Effect of Proposed Changes:

The bill expands the current public records exemptions for identification and location information of certain public employees to include DOH personnel whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the DOH, and their spouses and children.[36] The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, and photographs of such DOH personnel.
- The names, home addresses, telephone numbers, and places of employment of the spouses and children of such DOH personnel.
- The names and locations of schools and day care facilities attended by the children of such DOH personnel.

The bill provides that the exemption may be maintained only if such DOH personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

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[33] Section 456.073(1), F.S. A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred (*id*.).

[34] *See* s. 456.073, F.S. Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board (s. 456.073(2), F.S.). If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee; if the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint (s. 456.073(4), F.S.).

[35] Section 456.066, F.S.

[36] According to the DOH bill analysis, the personal identifying information of approximately 240 current or former DOH personnel and that of their families would be exempt; such personnel includes investigators, inspectors, doctors, nurses, attorneys, and other employees whose duties include the investigation or prosecution of complaints against health care practitioners or the inspection of licensed practitioners or facilities (the DOH bill analysis, dated November 26, 2012, is on file with the Senate Governmental Oversight and Accountability Committee).

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the new public records exemption and because agencies could incur additional administrative costs to

comply with the new public records exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Incidents Involving DOH Inspectors and Investigators

DOH inspectors and investigators have reported incidents of threats and abuse.[37] According to the DOH, from November 2011 through mid-2012, a complainant who was displeased with psychiatric treatment provided to a relative subsequent to a Baker Act harassed and threatened telephone staff, investigators, and supervisors.[38]

In another case, a man made a threatening phone call to a DOH attorney who he felt was preventing him from receiving medications. During the phone call, the man told the DOH attorney that she would "pay for it" and that the DOH would find her "dead in a pool of blood."[39]

A DOH investigator who went to an investigation subject's house to serve an order to compel a mental and physical examination was invited into the house by the subject's husband. The investigator discovered upon entering the house that the husband had drawn his gun.[40]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on February 21, 2013:

The CS differs from the original bill in that it does not protect the personal identifying information of personnel whose duties *support* the investigation and prosecution of complaints filed against healthcare professionals or the inspection of practitioners and facilities regulated by the DOH.

B. Amendments:

None.

[37] A summary of the incidents was prepared by DOH staff (on file with the Senate Governmental Oversight and Accountability Committee).
[38] *See* the incident summary referenced in footnote 38.
[39] *Id*.
[40] *Id*.

By the Committee on Health Policy; and Senator Hays

588-01735-13 201360c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families ~~Family Services~~ whose

588-01735-13 201360c1

duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security

numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the

Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former

guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel,

and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable

efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, and photographs of current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the

exemption.

5.a. Sub-subparagraphs 2.a.-l. are ~~This paragraph is~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

b. Sub-subparagraph 2.m. is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, and photographs of current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health; that the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and that the names and locations of schools and day care facilities attended by the children of such personnel be made exempt from public record requirements. The Legislature finds that the release of such identifying and location information might place current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried

out by personnel of the Department of Health, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Health. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

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

THE FLORI...

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic _____ Bill Number 60 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 452
INTRODUCER:	Health Policy Committee
SUBJECT:	OGSR/Joshua Abbott Organ and Tissue Registry/Donor Information
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall		**hp SPB 7004 as introduced**
2.	Naf	McVaney	GO	**Favorable**
3.	Looke	Phelps	RC	**Favorable**
4.				
5.				
6.				

I. Summary:

SB 452 is the result of an Open Government Sunset Review by the Health Policy Committee.

Current law provides a public records exemption for personal identifying information held in the Joshua Abbott Organ and Tissue Registry, which is an interactive web-based organ and tissue donor registry that allows for online organ donor registration. Specifically, information that identifies a donor is confidential and exempt from public records requirements. Such information may be disclosed under specified circumstances.

The public records exemption is subject to review under the Open Government Sunset Review Act and will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 765.51551 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution 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 Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] 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 provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] 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.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] 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)).
[5] Section 119.07(1)(a), F.S.
[6] 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 (s*ee 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).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] 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.).
[11] Section 119.15(3), F.S.

The Act 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.[12] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- 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.[13]

The Act also requires specified questions to be considered during the review process.[14]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[15] 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 exception[16] to the exemption is created.[17]

Organ Donations in Florida

Over 3,500 people in Florida are registered and waiting for organ transplants, and thousands more wait for tissue donations.[18] The most common types of organ transplants include the kidneys, liver, heart, lungs and pancreas, but many other organs and tissues can be transplanted or used for various other medical procedures.[19] Nationwide, nearly 6,000 people die each year waiting for an organ donation.[20]

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[12] Section 119.15(6)(b), F.S.
[13] *Id*.
[14] 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?

[15] 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.
[16] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[17] *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).
[18] *FAQs About Donation*, Donate Life Florida, 2009, available at: http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22, (last visited Jan. 16, 2013).
[19] Id.
[20] Id.

Four major organ and tissue procurement agencies operate in Florida to facilitate the process of organ donation. These agencies are certified by the U.S. Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and coordinate the donation process when organs become available. [21] Each agency serves a different region of the state. [22] In addition to federal certification of organ procurement organizations, the Agency for Healthcare Administration (AHCA) also certifies these organ procurement organizations and other eye and tissue organizations.[23]

The Joshua Abbott Organ and Tissue Donor Registry[24] (Donor Registry)

In 2008,[25] Florida's Legislature found that a shortage of organ and tissue donors existed in Florida, and that there was a need for a statewide donor registry with online donor registration capability and enhanced donor education to increase the number of organ and tissue donors. This online registry would afford more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.[26] As directed by the legislature, the AHCA and the Department of Highway Safety and Motor Vehicles (DHSMV) jointly contracted for the operation of Florida's interactive web-based donor registry that, through electronic means, allows for online donor registration and the recording of organ and tissue donation records submitted through the driver's license identification program or through other sources. The AHCA and the DHSMV selected Donate Life Florida, which is a coalition of Florida's organ, tissue, and eye donor programs, to run the donor registry and maintain donor records.

Floridians who are age 18 or older can join the donor registry either online,[27] at the DHSMV (or their local drivers license office), or by contacting Donate Life Florida for a paper application. Children ages 13 to 17 may join the registry, but the final decision on any organ donation of a minor rests with the parent or guardian. The registry collects personal information from each donor including, but not limited to, his or her name, address, date and place of birth, race, ethnicity, and driver's license number.

Since 2007, the number of donors registered in the donor registry has increased by over 1,500,000.[28] As of January 16, 2013, there were 6,938,301 people registered in the donor registry.[29] Its large number of registered donors ranks the Joshua Abbott Organ and Tissue Donor Registry as the second largest donor registry in the United States in terms of enrollment. [30]

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[21] Organ Procurement Organizations, Organdonor.gov, available at http://organdonor.gov/materialsresources/materialsopolist.html, (last visited Jan. 16, 2013).
[22] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[23] AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks is available on FloridaHealthFinder at www.floridahealthfinder.gov, (last visited on Jan. 16, 2013.)
[24] Section 765.5155(5), F.S., designates the donor registry as the Joshua Abbott Organ and Tissue Registry, however it is currently referred to as the Joshua Abbott Organ and Tissue Donor Registry.
[25] Chapter 2008-223, L.O.F.
[26] Section 765.5155(1), F.S.
[27] At https://www.donatelifeflorida.org/ (last visited on Jan. 16, 2013)
[28] There were 5,215,437 registered donors reported in the DHSMV's annual report for 2007-2008, which is available at: http://www.flhsmv.gov/html/AgencyAnnualReport2008.pdf, (last visited Sept. 27, 2012).
[29] http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22, (last visited Jan. 16, 2013).
[30] From Donate Life Florida's annual report to AHCA for 2011. This report is on file with the Senate Health Policy Committee.

Organ Donor Registration at the DHSMV

Section 765.521, F.S., which predates the establishment of the donor registry, requires that the AHCA and the DHSMV implement a system to encourage potential donors to make anatomical gifts through the process of issuing and renewing driver's licenses. Though the DHSMV no longer maintains an organ donor database, it still gives out organ donor cards in its offices around the state. The DHSMV will collect those cards if they are returned to its offices, but donors are encouraged to register with the donor registry electronically or to mail their organ donation cards directly to Donate Life Florida. Any donor cards collected by the DHSMV are mailed directly to Donate Life Florida for entry into the donor registry without copies of the information being made. The DHSMV maintains in its driver's license database a flag marking the person as a donor.[31]

Donor Registry Public Records Law Exemption

Section 765.51551, F.S., enacted in 2008,[32] makes all personal identifying information in the donor registry confidential and exempt from s. 119.07(1), F.S., and Article I, s. 24 of the State Constitution.

However, the statute authorizes the protected information to be made available to:

- Organ, tissue and eye procurement organizations that have been certified by the AHCA for purposes of ascertaining or effectuating the existence of a gift; and
- Persons engaged in bona fide research who agree to:
  - Submit a research plan to the AHCA that specifies the exact nature of the requested information and the intended use of such information;
  - Maintain the confidentiality of the records or information made available;
  - Destroy any confidential records or information once the research is concluded; and
  - Not directly or indirectly contact, for any purpose, any donor or donee.[33]

In enacting the public records exemption for the donor registry, the Florida Legislature found that it was a public necessity to make confidential and exempt from disclosure all information held in the donor registry which would identify a donor because:

- Making such information publicly available could open up donors in the registry to invasion of their personal privacy;
- The disclosure of such information could hinder the effective and efficient administration of the organ and tissue donor program;
- Opening such information up to the public could reduce donations and the availability of potentially life-saving organs and tissues; and

[31] Email memo from Deborah Todd, program manager for Division of Motorist Services at the DHSMV, on file with the Senate Health Regulation Committee.
[32] Chapter 2008-222, L.O.F.
[33] Section 765.51551(2), F.S.

- Access to such information could be used to stalk, harass, solicit, or intimidate organ and tissue donors.[34]

Section 765.51551, F.S., does not exempt any information which is collected by the DHSMV before it is sent to Donate Life Florida for entry into the donor registry. However, personal identifying information[35] pertaining to a motor vehicle record collected by the DHSMV is protected from disclosure by the federal Driver Privacy Protection Act[36] and other Florida Statutes.[37]

Open Government Sunset Review for Section 765.51551, F.S.

Senate professional staff of the Health Policy Committee conducted a review of the public records exemption in s. 765.51551, F.S., as required by the Open Government Sunset Review Act.[38] This review included gathering information on the past and current status of the Joshua Abbott Organ and Tissue Donor Registry and the public records exemption in s. 765.51551, F.S. Senate professional staff distributed a questionnaire to various interested parties, including the AHCA, the DHSMV, Donate Life Florida, and multiple organ and tissue procurement agencies, in order to determine the necessity of maintaining the public records exemption.[39] All organizations responding to the questionnaire supported the reenactment of this public records exemption.

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption for information that identifies a donor and that is held in the donor registry.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal government.

B. Public Records/Open Meetings Issues:

This bill saves from repeal the existing public records exemption in s. 765.51551, F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

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[34] Chapter 2008-222, L.O.F.
[35] Including a driver's social security number, driver's license number, name, address, telephone number, and medical and disability information.
[36] 18 U.S.C. 2721-2725
[37] Section 322.142(4), F.S., protects the driver's photograph; s. 322.126, F.S., protects the driver's medical and disability information; and see generally s. 119.0712(2), F.S.
[38] Section 119.15, F.S.
[39] These completed questionnaires are on file with the Senate Health Policy Committee.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Health Policy

588-01017-13 2013452__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 765.51551, F.S., which provides an exemption from public records requirements for personal identifying information of a donor held in the Joshua Abbott Organ and Tissue Registry; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 765.51551, Florida Statutes, is amended to read:

765.51551 Donor registry; public records exemption.—

(1) Information held in the donor registry which identifies a donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Such information may be disclosed to the following:

(a) Procurement organizations that have been certified by the agency for the purpose of ascertaining or effectuating the existence of a gift under s. 765.522.

(b) Persons engaged in bona fide research if the person agrees to:

1. Submit a research plan to the agency which ~~that~~ specifies the exact nature of the information requested and the intended use of the information;

2. Maintain the confidentiality of the records or information if personal identifying information is made

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available to the researcher;

3. Destroy any confidential records or information obtained after the research is concluded; and

4. Not directly or indirectly contact, for any purpose, any donor or donee.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 530
INTRODUCER:	Judiciary Committee and Senator Thrasher
SUBJECT:	Dispute Resolution
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Munroe	Phelps	RC	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 530 creates the Revised Florida Arbitration Code based on a 2000 model act. The original act, the Florida Arbitration Code (FAC) was passed in 1957 and subsequently revised in 1967. Since 1967, the FAC has gone mostly unchanged. The bill includes concepts that were not included in the original act, such as the ability of arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, required conflict disclosures by arbitrators, immunity of arbitrators, and other substantive changes to the law. The bill lays out a detailed framework for arbitration conducted under Florida law and repeals sections of the existing FAC, the substantive concepts of which are subsumed by the revised act.

This bill substantially amends the following sections of the Florida Statutes: 682.01, 682.02, 682.03, 682.04, 682.05, 682.06, 682.07, 682.08, 682.09, 682.10, 682.11, 682.12, 682.13, 682.14, 682.15, 682.19, 682.20, 440.1926, 489.1402, and 731.401.

This bill creates the following sections of the Florida Statutes: 682.011, 682.012, 682.013, 682.014. 682.015, 682.031, 682.032, 682.033, 682.041, 682.051, 682.081, 682.181, 682.23, and 682.25.

This bill repeals the following sections of the Florida Statutes: 682.16, 682.17, 682.18, 682.21, and 682.22.

II. Present Situation:

Florida traditionally has favored arbitration. In 1957, the Legislature enacted the Florida Arbitration Code (FAC),[1] which prescribes a framework governing the rights and procedures under arbitration agreements, including the enforceability of arbitration agreements. It was subsequently amended in 1967,[2] but remains largely unchanged. The FAC is based on the 1955 Uniform Arbitration Act (UAA). Alternative dispute resolution has been recognized as a viable alternative to litigation in a court or jury trial, and it historically has been attractive for the resolution of commercial business disputes.

Florida Arbitration Code

The FAC governs agreements to arbitrate where interstate commerce is not implicated.[3] The FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, appointment of arbitrators, arbitration hearing process and procedure, entry and enforcement of arbitration awards, and appeals.

Under the FAC, Florida courts have held that the determination of whether any dispute is subject to arbitration should be resolved in favor of arbitration.[4] A court's role in deciding whether to compel arbitration is limited to three gateway issues to determine the enforceability of an arbitration agreement: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived.[5] The FAC applies in arbitration cases only to the extent that it is not in conflict with federal law.[6]

Arbitration Generally

Arbitration is an alternative dispute resolution process in which parties "subm[it] a dispute to one or more impartial persons for a final and binding decision."[7] Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.[8] Parties to arbitration voluntarily give up substantial safeguards that litigants in court

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[1] *See* ch. 682. F.S., and chapter 57-402, Laws of Fla.
[2] Chapter 67-254, Laws of Fla.
[3] *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).
[4] Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 20 (Nov. 2008) (citing *Waterhouse Constr. Group, Inc. v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).
[5] *Seifert v. U.S. Home Corp*., 750 So. 2d 633, 636 (Fla. 1999).
[6] *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999), *review denied*, 763 So. 2d 1044 (Fla. 2000), and *Florida Power Corp. v. Casselberry*, 793 So. 2d 1174, 1179 (Fla. 5th DCA 2001).
[7] See the definition of "arbitration" at the website of the American Arbitration Association, http://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration;jsessionid=2jX0RZLCyKPV4wMPSrcvCkSmCLsbXCrLZvRsLrhVNnhFChmSSnKj!-1600829671?_afrLoop=832669183421451&_afrWindowMode=0&_afrWindowId=null (last visited Jan. 11, 2013).
[8] *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

proceedings enjoy, which may include the discovery process where parties obtain information from one another.[9]

Federal Arbitration Act

Congress enacted the Federal Arbitration Act (FAA) in 1925 to establish, in part, the enforceability of pre-dispute arbitration agreements involving interstate commerce.[10] The United States Supreme Court has recognized that with the passage of the FAA, Congress expressed intent for courts to enforce arbitration agreements and to place these agreements on an equal footing with other contracts.[11] The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.[12]

III. Effect of Proposed Changes:

This bill largely adopts the provisions of the 2000 revision of the Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws.[13] The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Additionally, the delivery of a notice to the person's residence or place of business, or another location held out by the person as a place of delivery, is sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate made on or after the effective date. It also applies retroactively if all parties agree to apply the revised act. The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before the effective date of the act, July 1, 2013. Beginning July 1, 2016, an agreement to arbitrate will be subject to the Revised Florida Arbitration Act.

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[9] Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13 (August 2005), *available at* http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america (last visited Jan. 11, 2013).
[10] See 9 U.S.C.A. ss. 1-16.
[11] *Allied-Bruce Terminix Cos, Inc. v. Dobson*, 513 U.S. 265, 270-271 (1995).
[12] Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).
[13] *See* Business Law Section of The Florida Bar, *Analysis of Proposed Revisions to the Florida Arbitration Code* (2012) (on file with the Senate Committee on Judiciary).

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., to indicate that although the revised act is a default statute, "the parties' autonomy as expressed in their agreements concerning an arbitration normally should control the arbitration."[14] However, there are some provisions that the parties cannot waive before a dispute arises or cannot waive at any point.[15] Parties may not waive the right to judicial relief, the right to a provisional remedy, jurisdiction of the courts, the right to appeal, the right to notice, the right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other requirements at any time which would fundamentally undermine the arbitration agreement.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that exist at law or in equity for the revocation of a contract. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration may continue during a court challenge of the arbitration agreement pending final resolution unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate. However, the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court having jurisdiction. However, if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

[14] *Id.* at 9.
[15] *Id.* at 9.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely manner or provide an adequate remedy.

If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator must state the factual findings and legal basis for the award. A party may seek to confirm or vacate a provisional remedy for injunctive or equitable relief in a court

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if separate arbitration proceedings occur; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately. However, the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for

arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct, and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill amends s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. An arbitrator who does not disclose an interest in the outcome of the arbitration is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator; powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees and other reasonable expenses of litigation if the court decides that the arbitrator has immunity.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary disposition if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then may control the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must then summarily decide the motion and issue an order.

A party to a provisional remedy for injunctive or equitable relief issued by an arbitrator may motion a court to confirm or vacate the remedy. The court must confirm an award of a provisional remedy if the award satisfies the legal standards for awarding a party injunctive or equitable relief. If the award for injunctive or equitable relief fails to satisfy such legal standards, the court must vacate the provisional remedy.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties to the arbitration.

Change of Award by Arbitrator

The bill amends s. 682.10, F.S., to provide conditions to modify or correct an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, results in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. A motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees, and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may make a motion to the court for an order to confirm the award.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded his or her powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party knew or should have known of such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- A miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award is evident;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court must modify and correct the award. If not, the court must confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy has the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence or place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act.[16]

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

Rule of Construction for Will or Trust Disputes

The bill provides a rule of construction that a requirement in a will or trust to arbitrate is subject to the Revised Florida Arbitration Code.

[16] 15 U.S.C. s. 7002.

Repeal of Provisions in Florida Arbitration Code

The bill repeals s. 682.16, F.S., providing for the docketing of certain arbitration documents filed with the clerks of court.

The bill repeals s. 682.17, F.S., providing for certain motions to a court under the Florida Arbitration Code.

The bill repeals s. 682.18, F.S., specifying the jurisdiction of courts for certain arbitration matters under the Florida Arbitration Code and providing a definition of "court."

The bill repeals s. 682.21, F.S., providing that the Florida Arbitration Code applies only to agreements made subsequent to the effective date of the code.

The bill repeals s. 682.22, F.S., which provides a severability clause for the application of the Florida Arbitration Code.

Statutory Cross-references

The bill amends ss. 440.1926, 489.144, and 731.401, F.S., to correct cross-references to the revised act.

Effective Date

The bill takes effect July 1, 2013.

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 State Courts Administrator (OSCA) completed a fiscal impact on the bill. According to OSCA, the fiscal impact on the courts cannot be precisely quantified, but OSCA anticipates judicial workload will not increase as a result of the bill if a corresponding increase in the use of arbitration proceedings results in fewer cases going to trial.[17]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on February 19, 2013:
The committee substitute corrects some drafting errors that were in the original bill. In addition, the committee substitute provides a rule of construction that a requirement to arbitrate will or trust disputes is subject to the Revised Florida Arbitration Code. The amendment also clarifies that after June 30, 2016, all agreements to arbitrate, regardless of the date executed, will be subject to the Revised Florida Arbitration Code.

B. Amendments:

None.

[17] Office of the State Courts Administrator, 2013 Judicial Impact Statement SB 530 (Feb. 14, 2013) (on file with the Senate Committee on Judiciary).

By the Committee on Judiciary; and Senator Thrasher

590-01694-13 2013530c1

A bill to be entitled

An act relating to dispute resolution; amending s. 682.01, F.S.; revising the short title of the "Florida Arbitration Code" to the "Revised Florida Arbitration Code"; creating s. 682.011, F.S.; providing definitions; creating s. 682.012, F.S.; specifying how a person gives notice to another person and how a person receives notice; creating s. 682.013, F.S.; specifying the applicability of the revised code; creating s. 682.014, F.S.; providing that an agreement may waive or vary the effect of statutory arbitration provisions; providing exceptions; creating s. 682.015, F.S.; providing for petitions for judicial relief; providing for service of notice of an initial petition for such relief; amending s. 682.02, F.S.; revising provisions relating to the making of arbitration agreements; requiring a court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate; providing for determination of specified issues by an arbitrator; providing for continuation of an arbitration proceeding pending resolution of certain issues by a court; revising provisions relating to applicability of provisions to certain interlocal agreements; amending s. 682.03, F.S.; revising provisions relating to proceedings to compel and to stay arbitration; creating s. 682.031, F.S.; providing for a court to order provisional remedies before an arbitrator is appointed and is authorized and able to act; providing

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for orders for provisional remedies by an arbitrator; providing that a party does not waive a right of arbitration by seeking provisional remedies in court; creating s. 682.032, F.S.; providing for initiation of arbitration; providing that a person waives any objection to lack of or insufficiency of notice by appearing at the arbitration hearing; providing an exception; creating s. 682.033, F.S.; providing for consolidation of separate arbitration proceedings as to all or some of the claims in certain circumstances; prohibiting consolidation if the agreement prohibits consolidation; amending s. 682.04, F.S.; revising provisions relating to appointment of an arbitrator; prohibiting an individual who has an interest in the outcome of an arbitration from serving as a neutral arbitrator; creating s. 682.041, F.S.; requiring certain disclosures of interests and relationships by a person before accepting appointment as an arbitrator; providing a continuing obligation to make such disclosures; providing for objections to an arbitrator based on information disclosed; providing for vacation of an award if an arbitrator failed to disclose a fact as required; providing that an arbitrator appointed as a neutral arbitrator who does not disclose certain interests or relationships is presumed to act with partiality for specified purposes; requiring parties to substantially comply with agreed-to procedures of an arbitration organization or any other procedures for challenges to

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

arbitrators before an award is made in order to seek vacation of an award on specified grounds; amending s. 682.05, F.S.; requiring that if there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators; requiring all arbitrators to conduct the arbitration hearing; creating s. 682.051, F.S.; providing immunity from civil liability for an arbitrator or an arbitration organization acting in that capacity; providing that this immunity is supplemental to any immunity under other law; providing that failure to make a required disclosure does not remove immunity; providing that an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records concerning the arbitration; providing exceptions; providing for awarding an arbitrator, arbitration organization, or representative of an arbitration organization with reasonable attorney fees and expenses of litigation under certain circumstances; amending s. 682.06, F.S.; revising provisions relating to the conduct of arbitration hearings; providing for summary disposition, notice of hearings, adjournment, and rights of a party to the arbitration proceeding; requiring appointment of a replacement arbitrator in certain circumstances; amending s. 682.07, F.S.; providing that a party to an arbitration proceeding may be represented by an attorney; amending s. 682.08, F.S.; revising provisions relating to the issuance,

service, and enforcement of subpoenas; revising provisions relating to depositions; authorizing an arbitrator to permit discovery in certain circumstances; authorizing an arbitrator to order compliance with discovery; authorizing protective orders by an arbitrator; providing for applicability of laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness; providing for court enforcement of a subpoena or discovery-related order; providing for witness fees; creating s. 682.081, F.S.; providing for judicial enforcement of a preaward ruling by an arbitrator in certain circumstances; providing exceptions; amending s. 682.09, F.S.; revising provisions relating to the record needed for an award; revising provisions relating to the time within which an award must be made; amending s. 682.10, F.S.; revising provisions relating to requirements for a motion to modify or correct an award; amending s. 682.11, F.S.; revising provisions relating to fees and expenses of arbitration; authorizing punitive damages and other exemplary relief and remedies; amending s. 682.12, F.S.; revising provisions relating to confirmation of an award; amending s. 682.13, F.S.; revising provisions relating to grounds for vacating an award; revising provisions relating to a motion for vacating an award; providing for a rehearing in certain circumstances; amending s. 682.14, F.S.; revising

provisions relating to the time for moving to modify or correct an award; deleting references to the term "umpire"; revising a provision concerning confirmation of awards; amending s. 682.15, F.S.; revising provisions relating to a court order confirming, vacating without directing a rehearing, modifying, or correcting an award; providing for award of costs and attorney fees in certain circumstances; repealing s. 682.16, F.S., relating to judgment roll and docketing of certain orders; repealing s. 682.17, F.S., relating to application to court; repealing s. 682.18, F.S., relating to the definition of the term "court" and jurisdiction; creating s. 682.181, F.S.; providing for jurisdiction relating to the revised code; amending s. 682.19, F.S.; revising provisions relating to venue for actions relating to the code; amending s. 682.20, F.S.; providing that an appeal may be taken from an order denying confirmation of an award unless the court has entered an order under specified provisions; providing that all other orders denying confirmation of an award are final orders; repealing s. 682.21, F.S., relating to the previous code not applying retroactively; repealing s. 682.22, F.S., relating to conflict of laws; creating s. 682.23, F.S.; specifying the relationship of the code to the Electronic Signatures in Global and National Commerce Act; providing for applicability; creating s. 682.25, F.S.; providing that the revised code does not apply to any dispute involving child custody, visitation, or child

support; amending s. 731.401, F.S.; providing for application of the act to an arbitration provision in a will or trust; amending ss. 440.1926 and 489.1402, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 682.01, Florida Statutes, is amended to read:

682.01 Short title ~~Florida Arbitration Code~~.—This chapter ~~Sections 682.01-682.22~~ may be cited as the "Revised Florida Arbitration Code."

Section 2. Section 682.011, Florida Statutes, is created to read:

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

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental

subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

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

Section 3. Section 682.012, Florida Statutes, is created to read:

682.012 Notice.—

(1) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Section 4. Section 682.013, Florida Statutes, is created to read:

682.013 Applicability of revised code.—

(1) The Revised Florida Arbitration Code governs an agreement to arbitrate made on or after July 1, 2013.

(2) Until June 30, 2016, the Revised Florida Arbitration Code governs an agreement to arbitrate made before July 1, 2013, if all the parties to the agreement or to the arbitration proceeding so agree in a record. Otherwise, such agreements shall be governed by the applicable law existing at the time the

parties entered into the agreement.

(3) The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before July 1, 2013.

(4) Beginning July 1, 2016, an agreement to arbitrate shall be subject to the Revised Florida Arbitration Code

Section 5. Section 682.014, Florida Statutes, is created to read:

682.014 Effect of agreement to arbitrate; nonwaivable provisions.—

(1) Except as otherwise provided in subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of:

1. Commencing a petition for judicial relief under s. 682.015(1);

2. Making agreements to arbitrate valid, enforceable, and irrevocable under s. 682.02(1);

3. Permitting provisional remedies under s. 682.031;

4. Conferring authority on arbitrators to issue subpoenas and permit depositions under s. 682.08(1) or (2);

5. Conferring jurisdiction under s. 682.181; or

6. Stating the bases for appeal under s. 682.20;

(b) Agree to unreasonably restrict the right under s. 682.032 to notice of the initiation of an arbitration

proceeding;

(c) Agree to unreasonably restrict the right under s. 682.041 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under s. 682.07 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by an attorney in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements in this section or:

(a) The applicability of this chapter, the Revised Florida Arbitration Code, under s. 682.013(1) or (4);

(b) The availability of proceedings to compel or stay arbitration under s. 682.03;

(c) The immunity conferred on arbitrators and arbitration organizations under s. 682.051;

(d) A party's right to seek judicial enforcement of an arbitration preaward ruling under s. 682.081;

(e) The authority conferred on an arbitrator to change an award under s. 682.10(4) or (5);

(f) The remedies provided under s. 682.12;

(g) The grounds for vacating an arbitration award under s. 682.13;

(h) The grounds for modifying an arbitration award under s. 682.14;

(i) The validity and enforceability of a judgment or decree based on an award under s. 682.15(1) or (2);

(j) The validity of the Electronic Signatures in Global and

National Commerce Act under s. 682.23; or

(k) The effect of excluding from arbitration under this chapter disputes involving child custody, visitation, or child support under s. 682.25.

Section 6. Section 682.015, Florida Statutes, is created to read:

682.015 Petition for judicial relief.—

(1) Except as otherwise provided in s. 682.20, a petition for judicial relief under this chapter must be made to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial petition to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Section 7. Section 682.02, Florida Statutes, is amended to read:

682.02 Arbitration agreements made valid, irrevocable, and enforceable; scope.—

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(5) ~~Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof.~~ This section also applies to written interlocal agreements under ss. 163.01 and 373.713 in which two or more parties agree to submit to arbitration any controversy between them concerning water use permit applications and other matters, regardless of whether or not the water management district with jurisdiction over the subject application is a party to the interlocal agreement or a participant in the arbitration. ~~Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.~~

Section 8. Section 682.03, Florida Statutes, is amended to read:

682.03 Proceedings to compel and to stay arbitration.—

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate.

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. ~~A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application.~~

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. ~~If an issue referable to arbitration under an agreement or provision for arbitration subject to this law~~

~~becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1), such application shall be made in said court. Otherwise and subject to s. 682.19, such application may be made in any court of competent jurisdiction.~~

(3) If the court finds that there is no enforceable agreement to arbitrate, it may not order the parties to arbitrate pursuant to subsection (1) or subsection (2). ~~Any action or proceeding involving an issue subject to arbitration under this law shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.~~

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established. ~~On application the court may stay an arbitration proceeding commenced or about to be commenced, if it shall find that no agreement or provision for arbitration subject to this law exists between the party making the application and the party causing the arbitration to be had. The court shall summarily hear and determine the issue of the making of the agreement or provision and, according to its determination, shall grant or deny the application.~~

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in s. 682.19. ~~An order for arbitration shall~~

~~not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.~~

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Section 9. Section 682.031, Florida Statutes, is created to read:

682.031 Provisional remedies.—

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of

the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under this section.

(4) If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator shall state in the award the factual findings and legal basis for the award.

(5) A party may seek to confirm or vacate a provisional remedy award for injunctive or equitable relief under s. 682.081.

Section 10. Section 682.032, Florida Statutes, is created to read:

682.032 Initiation of arbitration.—

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under s. 682.06(3) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

Section 11. Section 682.033, Florida Statutes, is created to read:

682.033 Consolidation of separate arbitration proceedings.—

(1) Except as otherwise provided in subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Section 12. Section 682.04, Florida Statutes, is amended to read:

682.04 Appointment of arbitrators by court.—

(1) If the parties to an agreement to arbitrate agree on ~~or provision for arbitration subject to this law provides~~ a method for appointing ~~the appointment of~~ arbitrators ~~or an umpire~~, this method must ~~shall~~ be followed, unless the method fails.

(2) The court, on motion of a party to an arbitration agreement, shall appoint one or more arbitrators, if:

(a) The parties have not agreed on a method;

(b) The agreed method fails;

(c) One or more of the parties failed to respond to the demand for arbitration; or

(d) An arbitrator fails to act and a successor has not been appointed.

(3) ~~In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his or her successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire.~~ An arbitrator ~~or umpire~~ so appointed has all the ~~shall have like~~ powers of an arbitrator designated ~~as if named or provided for~~ in the agreement to arbitrate appointed pursuant to the agreed method ~~or provision~~.

(4) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Section 13. Section 682.041, Florida Statutes, is created to read:

682.041 Disclosure by arbitrator.—

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the person's impartiality as an arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding.

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representative, a witness, or another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or subsection (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under s. 682.13(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by subsection (1) or subsection (2), upon timely objection by a party, the court may vacate an award under s. 682.13(1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under s. 682.13(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under s. 682.13(1)(b).

Section 14. Section 682.05, Florida Statutes, is amended to read:

682.05 Majority action by arbitrators.—If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of the arbitrators shall conduct the hearing under s. 682.06(3). ~~The powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration.~~

Section 15. Section 682.051, Florida Statutes, is created to read:

682.051 Immunity of arbitrator; competency to testify; attorney fees and costs.—

(1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded under this section supplements

any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by s. 682.041 does not cause any loss of immunity under this section.

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(b) To a hearing on a motion to vacate an award under s. 682.13(1)(a) or (b) if the movant establishes prima facie that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator,

organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

Section 16. Section 682.06, Florida Statutes, is amended to read:

682.06 Hearing.—

(1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence. ~~Unless otherwise provided by the agreement or provision for arbitration:~~

~~(1)(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his or her jurisdiction, have like powers and be subject to like limitations thereon.~~

~~(b) The arbitrators, or umpire in the course of his or her jurisdiction, may hear and decide the controversy upon the~~

~~evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his or her jurisdiction, to proceed promptly with the hearing and making of the award.~~

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond. ~~The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.~~

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The

court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision. ~~The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy.~~

(4) At a hearing under subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with s. 682.04 to continue the proceeding and to resolve the controversy.

Section 17. Section 682.07, Florida Statutes, is amended to read:

682.07 Representation by attorney.—A party has the right to be represented by an attorney at any arbitration proceeding or hearing under this law. ~~A waiver thereof prior to the proceeding or hearing is ineffective.~~

Section 18. Section 682.08, Florida Statutes, is amended to read:

682.08 Witnesses, subpoenas, depositions.—

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. ~~Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of her or his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.~~

(2) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to, or a witness in, an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken. ~~On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of her or his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or her or him of a witness who cannot be subpoenaed or is unable to attend the hearing.~~

(3) An arbitrator may permit such discovery as the

arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective. ~~All provisions of law compelling a person under subpoena to testify are applicable.~~

(4) If an arbitrator permits discovery under subsection (3), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to

make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

(8)~~(4)~~ Fees for attendance as a witness shall be the same as for a witness in the circuit court.

Section 19. Section 682.081, Florida Statutes, is created to read:

682.081 Judicial enforcement of preaward ruling by arbitrator.—

(1) Except as provided in subsection (2), if an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request that the arbitrator incorporate the ruling into an award under s. 682.12. A prevailing party may make a motion to the court for an expedited order to confirm the award under s. 682.12, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under s. 682.13 or s. 682.14.

(2) A party to a provisional remedy award for injunctive or equitable relief may make a motion to the court seeking to confirm or vacate the provisional remedy award.

(a) The court shall confirm a provisional remedy award for injunctive or equitable relief if the award satisfies the legal standards for awarding a party injunctive or equitable relief.

(b) The court shall vacate a provisional remedy award for injunctive or equitable relief which fails to satisfy the legal standards for awarding a party injunctive or equitable relief.

Section 20. Section 682.09, Florida Statutes, is amended to read:

682.09 Award.—

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding. ~~The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his or her jurisdiction. They or he or she shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.~~

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award. ~~An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement,~~

~~extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his or her objection prior to the delivery of the award to him or her.~~

Section 21. Section 682.10, Florida Statutes, is amended to read:

682.10 Change of award by arbitrators ~~or umpire~~.—

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A motion under subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(4) If a motion to the court is pending under s. 682.12, s. 682.13, or s. 682.14, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14. ~~On application of a party to the arbitration, or if an application to the court is pending under s. 682.12, s. 682.13 or s. 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in s. 682.14(1)(a) and (c) or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he or she must serve his or her objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of ss. 682.12-682.14.~~

Section 22. Section 682.11, Florida Statutes, is amended to read:

682.11 Remedies; fees and expenses of arbitration proceeding.—

(1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by

subsections (1) and (2), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under s. 682.12 or for vacating an award under s. 682.13.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. ~~Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.~~

Section 23. Section 682.12, Florida Statutes, is amended to read:

682.12 Confirmation of an award.—After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to s. 682.10 or s. 682.14 or is vacated pursuant to s. 682.13. ~~Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in ss. 682.13 and~~

~~682.14.~~

Section 24. Section 682.13, Florida Statutes, is amended to read:

682.13 Vacating an award.—

(1) Upon motion ~~application~~ of a party to an arbitration proceeding, the court shall vacate an arbitration award if ~~when~~:

(a) The award was procured by corruption, fraud, or other undue means; ~~.~~

(b) There was:

1. Evident partiality by an arbitrator appointed as a neutral arbitrator;

2. Corruption by an arbitrator; or

3. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding; ~~or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.~~

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to s. 682.06, so as to prejudice substantially the rights of a party to the arbitration proceeding; ~~The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.~~

(d) An arbitrator exceeded the arbitrator's powers; ~~The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice~~

~~substantially the rights of a party.~~

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under s. 682.06(3) not later than the beginning of the arbitration hearing; or ~~There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.~~

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in s. 682.032 so as to prejudice substantially the rights of a party to the arbitration proceeding.

~~But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.~~

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant. ~~An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.~~

(3) If the court vacates an award on a ground other than that set forth in paragraph (1)(e), it may order a rehearing. If the award is vacated on a ground stated in paragraph (1)(a) or paragraph (1)(b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph (1)(c), paragraph (1)(d), or paragraph (1)(f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in s. 682.09(2) for an award. ~~In vacating the award on grounds other than those stated in paragraph (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in paragraphs (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.~~

(4) If a motion ~~the application~~ to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Section 25. Section 682.14, Florida Statutes, is amended to read:

682.14 Modification or correction of award.—

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected

award pursuant to s. 682.10, the court shall modify or correct the award if ~~Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when~~:

(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.

(b) The arbitrators ~~or umpire~~ have awarded upon a matter not submitted in the arbitration ~~to them or him or her~~ and the award may be corrected without affecting the merits of the decision upon the issues submitted.

(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the motion ~~application~~ is granted, the court shall modify and correct the award ~~so as to effect its intent~~ and ~~shall~~ confirm the award as so modified and corrected. Otherwise, unless a motion to vacate the award under s. 682.13 is pending, the court shall confirm the award as made.

(3) A motion ~~An application~~ to modify or correct an award may be joined in the alternative with a motion ~~an application~~ to vacate the award under s. 682.13.

Section 26. Section 682.15, Florida Statutes, is amended to read:

682.15 Judgment or decree on award.—

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On motion of a prevailing party to a contested judicial proceeding under s. 682.12, s. 682.13, or s. 682.14, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award. ~~Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.~~

Section 27. Section 682.16, Florida Statutes, is repealed.

Section 28. Section 682.17, Florida Statutes, is repealed.

Section 29. Section 682.18, Florida Statutes, is repealed.

Section 30. Section 682.181, Florida Statutes, is created to read:

682.181 Jurisdiction.—

(1) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

Section 31. Section 682.19, Florida Statutes, is amended to read:

682.19 Venue.—A petition pursuant to s. 682.015 must be filed in the court of the county in which the agreement to

arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the petition may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent petitions must be made in the court hearing the initial petition unless the court otherwise directs. ~~Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if she or he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.~~

Section 32. Section 682.20, Florida Statutes, is amended to read:

682.20 Appeals.—

(1) An appeal may be taken from:

(a) An order denying a motion ~~an application~~ to compel arbitration made under s. 682.03.

(b) An order granting a motion ~~an application~~ to stay arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

(c) An order confirming ~~or denying confirmation of~~ an award.

(d) An order denying confirmation of an award unless the court has entered an order under s. 682.10(4) or s. 682.13. All other orders denying confirmation of an award are final orders.

(e) ~~(d)~~ An order modifying or correcting an award.

(f) ~~(e)~~ An order vacating an award without directing a rehearing.

(g) ~~(f)~~ A judgment or decree entered pursuant to this chapter ~~the provisions of this law~~.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Section 33. Section 682.21, Florida Statutes, is repealed.

Section 34. Section 682.22, Florida Statutes, is repealed.

Section 35. Section 682.23, Florida Statutes, is created to read:

682.23 Relationship to Electronic Signatures in Global and National Commerce Act.—The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7002.

Section 36. Section 682.25, Florida Statutes, is created to read:

682.25 Disputes excluded.—This chapter does not apply to any dispute involving child custody, visitation, or child support.

Section 37. Subsection (2) of section 731.401, Florida Statutes, is amended to read:

731.401 Arbitration of disputes.—

(2) Unless otherwise specified in the will or trust, a will or trust provision requiring arbitration shall be presumed to require binding arbitration under chapter 682, the Revised Florida Arbitration Code. If an arbitration enforceable under

this section is governed under chapter 682, the arbitration provision in the will or trust shall be treated as an agreement for the purposes of applying chapter 682 ~~s. 44.104~~.

Section 38. Section 440.1926, Florida Statutes, is amended to read:

440.1926 Alternate dispute resolution; claim arbitration.—Notwithstanding any other provision of this chapter, the employer, carrier, and employee may mutually agree to seek consent from a judge of compensation claims to enter into binding claim arbitration in lieu of any other remedy provided for in this chapter to resolve all issues in dispute regarding an injury. Arbitrations agreed to pursuant to this section shall be governed by chapter 682, the Revised Florida Arbitration Code, except that, notwithstanding any provision in chapter 682, the term "court" shall mean a judge of compensation claims. An arbitration award in accordance with this section is ~~shall be~~ enforceable in the same manner and with the same powers as any final compensation order.

Section 39. Paragraph (a) of subsection (1) of section 489.1402, Florida Statutes, is amended to read:

489.1402 Homeowners' Construction Recovery Fund; definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(a) "Arbitration" means alternative dispute resolution entered into between a claimant and a contractor either pursuant to a construction contract that contains a mandatory arbitration clause or through any binding arbitration under chapter 682, the Revised Florida Arbitration Code.

Section 40. This act shall take effect July 1, 2013.

THE FLORI...

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic _____ Bill Number 530 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-2013
Meeting Date

Topic DISPUTE RESOLUTION Bill Number CS/SB 530 *(if applicable)*

Name BILL WILEY Amendment Barcode *(if applicable)*

Job Title ATTORNEY

Address 3647 LETITIA LANE Phone 850-545-9438
Street

TALLAHASSEE FL 32312 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing BUSINESS LAW SECTION, THE FLORIDA BAR

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 3/21/2013 8:01:24 AM
Ends: 3/21/2013 9:29:54 AM **Length: 01:28:31**

8:01:26 AM	Senator Thrasher calls the meeting to order
8:01:33 AM	roll call
8:01:41 AM	quorum present
8:02:07 AM	SB 954 by Senator Gardiner
8:02:38 AM	Senator Gardiner explains bill
8:02:57 AM	Chester Straub, Technological Research & Development Authority, waives in support
8:03:19 AM	Brian Pitts, Justice-2-Jesus, waives in support
8:03:33 AM	Senator Montford asks question
8:03:55 AM	Senator Gardiner answers
8:04:06 AM	Senator Gardiner closes on bill
8:04:31 AM	roll call on SB 954
8:04:40 AM	SB 954 by Senator Gardiner reported favorably
8:05:13 AM	SB 628 by Senator Joyner
8:05:42 AM	Bill explained by Senator Joyner's assistant, Randi Rosete
8:06:11 AM	Eric Maclure, State Courts System, waives in support
8:06:22 AM	Brian Pitts, Justice-2-Jesus, waives in support
8:06:29 AM	Ms. Rosete waives close
8:06:32 AM	Roll call on SB 628
8:06:40 AM	SB 628 by Senator Joyner is reported favorably
8:07:02 AM	CS/CS/SB 166 by Senator Richter
8:07:22 AM	Senator Richter explains bill
8:07:55 AM	Charles Milsted, AARP, waives in support
8:08:13 AM	Brian Pitts, Justice-2-Jesus, speaks on bill
8:09:03 AM	Senator Richter waives close
8:09:09 AM	Roll call
8:09:19 AM	CS/CS/SB 166 reported favorably
8:09:42 AM	SB 230 by Senator Ring
8:09:50 AM	Senator Ring explains bill
8:10:14 AM	Senator Ring waives close
8:10:29 AM	roll call
8:10:35 AM	SB 230 by Senator Ring reported favorably
8:11:02 AM	CS/SB 120 by Senator Latvala
8:11:12 AM	Senator Latvala explains bill
8:11:50 AM	Take up Amendment 460676
8:12:07 AM	Without objection, amendment 460676 adopted
8:12:18 AM	Senator Margolis asks question
8:12:27 AM	Mr. Dunbar answers question
8:13:12 AM	Pete Dunbar, Real Property Section of the Florida Bar, waives in support
8:13:25 AM	Brian Pitts, Justice-2-Jesus, waives in support
8:13:34 AM	Senator Latvala waives close
8:13:47 AM	Without objection, Senator Latvala moves to CS
8:13:57 AM	roll call
8:14:02 AM	CS/SB 120 by Senator Latvala reported favorably
8:14:36 AM	CS/SB 1096 by Senator Montford
8:14:47 AM	Senator Montford explains bill
8:15:30 AM	Brian Pitts, Justice-2-Jesus, speaks on bill
8:17:10 AM	Senator Montford waives close
8:18:09 AM	roll call
8:18:14 AM	CS/SB 1096 by Senator Montford reported favorably
8:18:43 AM	CS/SB 718 by Senator Stargel
8:19:19 AM	Senator Stargel explains bill
8:19:59 AM	Senator Latvala

8:20:42 AM Amendment 432516 by Senator Lee
8:21:00 AM Senator Stargel explains 432516
8:22:00 AM Senator Latvala asks question
8:23:02 AM Senator Stargel answers
8:23:33 AM Senator Latvala asks question
8:24:16 AM Senator Stargel answers
8:24:30 AM Senator Latvala
8:24:49 AM Senator Stargel answers
8:25:13 AM Senator Latvala
8:25:20 AM Senator Stargel answers
8:25:37 AM Senator Latvala
8:26:05 AM Senator Stargel responds
8:26:50 AM Senator Latvala
8:27:20 AM Senator Thrasher responds
8:27:45 AM Senator Sobel asks question
8:27:57 AM Senator Stargel responds
8:28:12 AM Senator Sobel follows up
8:28:35 AM Senator Stargel responds
8:29:06 AM Senator Sobel
8:29:14 AM Senator Stargel responds
8:29:23 AM Senator Sobel
8:30:03 AM Senator Stargel responds
8:30:19 AM Senator Sobel
8:30:55 AM Senator Stargel responds
8:31:23 AM Senator Latvala speaks
8:32:39 AM TP CS/SB 718
8:33:03 AM Senator Lee
8:33:23 AM CS/SB 60 by Senator Hays
8:33:42 AM CS/SB 60 explained by Jessica Crawford
8:33:55 AM Brian Pitts, Justice-2-Jesus, waives in support
8:34:27 AM Ms. Crawford waives close
8:34:31 AM roll call
8:34:37 AM CS/SB 60 by Senator Hays reported favorably
8:35:13 AM SB 452 by Committee of Health Policy
8:35:38 AM SB 452 explained by Dan Looke of Health Policy
8:36:00 AM Mr. Looke waives close
8:36:06 AM roll call
8:36:12 AM SB 452 reported favorably
8:36:46 AM CS/SB 530 by Senator Thrasher
8:37:06 AM Senator Smith takes chair
8:37:13 AM Senator Thrasher explains bill
8:38:25 AM Bill Wiley, Business Law Section of The Florida Bar, waives in support
8:38:50 AM Brian Pitts, Justice-2-Jesus, speaks on bill
8:39:35 AM Senator Thrasher waives close
8:40:35 AM roll call
8:40:43 AM CS/SB 530 by Senator Thrasher reported favorably
8:41:13 AM Chair returned to Senator Thrasher
8:41:21 AM Take back up CS/SB 718
8:41:43 AM Senator Lee
8:42:23 AM Amendment to Amendment adopted without objection
8:43:26 AM Without objection, show amendment adopted
8:43:40 AM Senator Margolis asks question
8:43:51 AM Senator Stargel responds
8:45:04 AM Lynn M. Britt speaks on bill
8:52:58 AM Senator Diaz de la Portilla asks question
8:53:37 AM Ms. Britt responds
8:53:59 AM Senator Diaz de la Portilla asks question
8:54:13 AM Ms. Britt responds
8:54:22 AM Senator Ring moves to reconsider amendment
8:54:47 AM Without objection, take up amendment to amendment
8:55:41 AM Senator Latvala withdraws amendment to amendment
8:55:52 AM Senator Margolis

8:56:08 AM	Amendment is adopted
8:57:11 AM	Deborah Leff Israel, Family Law Reform, speaks for bill
9:02:09 AM	Jon Derrevere speaks for bill
9:04:10 AM	Tanya Williams speaks for bill
9:06:39 AM	Alan Frisher, FL Alimony Reform/Family Law Reform, speaks for bill
9:07:03 AM	Terrance Power, Family Law Reform, waives in support
9:07:12 AM	Brian Pitts, Justice-2-Jesus, speaks on bill
9:09:40 AM	Therese Kujak speaks against bill
9:14:42 AM	Carin Porras, Family Law Section of the Florida Bar, speaks against bill
9:19:21 AM	Angela Yaden, FL Alimony Reform, waives in support
9:20:21 AM	Elizabeth Willes waives in opposition
9:20:24 AM	Mike Harrell waives
9:20:37 AM	Without objection, Senator Lee moves we CS
9:20:52 AM	Senator Latvala comments on bill
9:20:59 AM	Senator Ring comments on bill
9:21:29 AM	Senator Smith comments on bill
9:22:28 AM	Senator Sobel comments on bill
9:23:44 AM	Senator Negron comments on bill
9:24:49 AM	Senator Lee comments on bill
9:26:39 AM	Senator Montford comments on bill
9:27:40 AM	Senator Stargel closes on bill
9:28:18 AM	roll call
9:29:04 AM	CS/CS/SB 718 reported favorably
9:29:30 AM	Senator Sobel moves we rise