

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 Children, Families, and Elder Affairs

BILL: SB 196

INTRODUCER: Senator Sobel

SUBJECT: Families First

DATE: February 13, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Pre-meeting
2.			JU	
3.			AHS	
4.			AP	
5.			RC	
6.				

I. Summary:

SB 196 creates a statewide system for registering and affording recognition to domestic partnerships and giving statewide application to all rights and responsibilities conferred on the partners and their children as provided in the bill. Specifically, the bill would:

- Provide legislative findings related to establishing and defining the rights and responsibilities of domestic partners.
- Create definitions of “department,” “domestic partnership,” and “partner.”
- Require individuals seeking to register a partnership to file a declaration attesting that each is 18 years of age or older; at least one is a Florida resident; and each consents to the jurisdiction of the Florida courts on matters related to the partnership.
- Make filing information in the registration that is intentionally or materially false a first degree misdemeanor.
- Require the Department of Health (DOH) to prepare necessary forms and to maintain records related to domestic partnerships as part of the vital statistics records.
- Require the clerks of the court to maintain a registry of all domestic partnerships entered into within the circuit and transmit all declarations of domestic partnership or records of dissolution to DOH on forms it prescribes.
- Prohibit partnerships between individuals who are already married to another person or in another partnership; who are blood relatives; or who lack capacity to consent; and voids partnerships that a court determines were coerced or fraudulent.
- Establishes the legal rights and responsibilities of individuals who are in a domestic partnership with respect to each other and their children, and the rights of the partners and their children under the tax laws of the state.

- Acknowledge that the Legislature lacks jurisdiction to extend the rights and responsibilities to any federal laws.
- Establish fees collected by the clerk of courts when a party files a petition or judgment for dissolution of domestic partnership or application for domestic partnership.

The bill will have an insignificant fiscal impact on the Department of Health, the clerks of court, and the state courts system and provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 28.101, 28.24, 97.1031, 382.002, 382.003, 382.0085, 382.021, 382.022, 382.023, 382.025, 382.0255, 446.50, and 741.28, Florida Statutes. This bill creates sections 741.501, 741.502, 741.503, 741.504, 741.505, 741.506, 741.507, 741.508, 741.509, 741.510, and 741.511, Florida Statutes. This bill reenacts Sections 921.0024(1)(b) and 943.171(2)(b), Florida Statutes.

II. Present Situation:

Marriage

Couples who wish to marry in Florida must obtain a license issued either by a county court judge or clerk of the court, subject to payment of a series of fees.¹ Before a license can be issued, the parties must submit a written affidavit, signed by both parties, providing their social security numbers, or other sworn identification, that indicates their ages; a statement regarding whether they have completed a premarital preparation course; and a statement indicating whether they have read the Family Law Handbook. Subject to limited exceptions, both parties must be at least 18 years, and one party must be male and the other female.² Couples must also disclose whether they have children together.³ A couple must first obtain a marriage license, then solemnize the marriage, whether by civil or religious ceremony.⁴ Once the license has been issued, it is recorded by the clerk, then transmitted to the DOH for inclusion in the vital statistics records.⁵

A common law marriage is “[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband wife, intend to be married, and hold themselves out to others as a married couple.”⁶ When recognized in Florida, common law marriages were given the “same dignity and recognition” as was accorded to ceremonial marriages.⁷ In 1968, the Florida Legislature created s. 741.211, F.S., which abrogated common law marriages entered into after 1968. Notwithstanding the statute, Florida courts continue to recognize common law marriages when validly entered into in another state.⁸

In 1997, the Florida Legislature again amended ch.741, F.S., this time to prohibit same-sex marriage. Section 741.212, F.S., states in relevant part:

¹ Sections 28.24(23), 741.01, and 741.02, F.S.

² Section 741.04, F.S.

³ Section 741.01(1), F.S.

⁴ Sections 741.08, 741.041, F.S.;

⁵ Section 382.021, F.S.

⁶ BLACK'S LAW DICTIONARY 439 (2d Pocket ed. 2001).

⁷ *Budd v. J.Y. Gooch Co.*, 157 Fla.716 (1946).

⁸ *Johnson v. Lincoln Square Properties*, 571 So.2d 541 (Fla. 2d DCA 1990) (limiting Section 741.211 to marriages occurring in Florida).

(1) Marriages between persons of the same sex ... or relationships between persons of the same sex which are treated as marriages...are not recognized for any purpose in this state....

(3) For purposes of interpreting any state statute or rule, the term “marriage” means only a legal union between one man and one woman a husband wife, and the term “spouse” applies only to a member of such a union.

The Legislature passed the bill to implement authority granted states in the Defense of Marriage Act (DOMA), which Congress adopted following a court case in Hawaii that legalized gay marriage. Members of Congress believed at the time that individuals would travel to Hawaii to marry, then return to their home state, where their marriages would be recognized under the Full Faith and Credit Clause of the U.S. Constitution. DOMA included language that removed any obligation of states to give effect to same-sex marriages that were legally entered into in other states.⁹ DOMA and Florida’s law were challenged by a same-sex couple who legally married in Massachusetts on the theory that both DOMA and the Florida law violated the Full Faith and Credit, Due Process, Equal Protection, Privileges and Immunities, and Commerce clauses of the U.S. Constitution.¹⁰ In rejecting all claims, the court refused also to elevate the ability to marry someone of the same gender to a fundamental right.¹¹ Thus, Florida’s law was upheld and the strategy envisioned by Congress succeeded.

At the same time s. 741.212, F.S. was being challenged in the courts, Florida voters passed Amendment 2, which added a DOMA provision to Florida’s constitution. The language states:

Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.¹²

Thus, the language of the Constitution not only defines marriage as a legal union between a man and a woman, as does s. 741.212, F.S., but it goes further to prohibit any other legal union “that is treated as marriage” or “the substantial equivalent” of marriage. To date, Florida courts have not interpreted those phrases in any case involving the rights or responsibilities of a relationship. However, the Florida Supreme Court has offered an indication of what its analysis might be as part of the Advisory Opinion it provided to the Attorney General on the amendment’s compliance with the single-subject requirement of the Florida Constitution and the statutory requirements for the ballot summary.¹³ In that opinion, the Court rejected the opponent’s claim that the amendment violated the single subject requirement because it impermissibly combined two distinct issues - marriage between a man and a woman and legal unions which provide for the benefits and responsibilities of marriage. Under that reading, voters could cast only one vote

⁹ House Committee on Governmental Operations, *Staff Analysis of CS/HB 147 – Same Sex Marriage* (March 6, 1997) (on file with the Senate Children, Families, and Elder Affairs Committee).

¹⁰ *Wilson v. Ake*, 354 F.Supp.2d 1298, 1302, (M.D. Fla. 2005).

¹¹ *Id.* at 1306.

¹² FLA. CONST. art. I, s. 27.

¹³ *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment*, 926 So.2d 1229 (Fla. 2006). For further discussion of article I, section 27 of the Florida Constitution see the Constitutional Issues section of this report.

– for or against – whether or not they had a split opinion about the underlying issues. Proponents argued that the amendment did not have that effect and the Court agreed.

The proposed amendment does not impermissibly force voters to approve a portion of the proposal which they oppose to obtain a change which they support. Rather, the voter is merely being asked to vote on the singular subject of whether the concept of marriage and the rights and obligations traditionally embodied therein should be limited to the union of one man and one woman. The plain language of the proposed amendment is clear that the legal union of a same-sex couple that is *not* the “substantial equivalent” of marriage is not within the ambit of the constitutional provision.¹⁴

Civil Unions & Domestic Partnerships

A civil union is a separate legal status available in some states that provides nearly all of the rights and responsibilities provided to married couples under state law, but does not provide any of the federal benefits of marriage.¹⁵ While defined slightly differently in different locations, “domestic partnership” is commonly defined as two adults who are parties to a valid domestic relationship and who meet the requirements for a valid domestic partnership, which typically include that the parties are at least 18 years of age, not married or in another relationship, not related by blood, willing and able to consent, and willing to be jointly responsible for each other’s basic food and shelter.¹⁶

In general, there are few distinctions between civil unions and domestic partnerships. Civil unions generally require solemnization like a marriage. Domestic partnerships often are made available to both same-sex and opposite-sex couples. Depending on the rights conferred, one status may provide more legal rights than the other, but some of the distinctions may be more symbolic than legal. In either case, it is not always certain whether one state will honor a civil union or domestic partnership that is validly created under legislative authority of another state.¹⁷

Domestic partnerships may be formed under the terms of a legislative enactment, however, state laws and local ordinances vary in the extent of the rights and responsibilities conferred. Some are comprehensive with nearly all of the rights and responsibilities of marriage under state law, and some are more limited covering, for example, health care facility visitation, health care decisions, funeral and burial decisions, notification of family members in situations that provide for mandatory or permissible notification, including emergencies, visitation rights at county correctional and juvenile detention centers, pre-need guardian designation, participation in

¹⁴ *Id.* at 1234.

¹⁵ Nat’l Center for Lesbian Rights, *Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States*, (2012) [hereinafter *Overview*], available at http://www.nclrights.org/site/DocServer/Relationship_Recognition.pdf?docID=881 (last visited Feb. 12, 2013). In 2004, the U.S. General Accounting Office identified 1,138 federal rights and responsibilities that turn on marital status. U.S. GENERAL ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004), available at <http://www.gao.gov/new.items/d04353r.pdf> (last visited Feb. 11, 2013).

¹⁶ Broward County, Fla., Code of Ordinances, Section 16 1/2-152(a) (Nov. 27, 2012); Miami-Dade County, Fla., Code of Ordinances, Section 11A-72 (March 6, 2012); Palm Beach County, Fla., Code of Ordinances, Section 2-6 (Feb. 2, 2013).

¹⁷ *Overview*, *supra* note 14.

education, and benefits of public employees. Currently, ten states and the District of Columbia have relationship recognition laws that cover civil unions and/or domestic partnerships.¹⁸

In Florida, eighteen jurisdictions formally recognize domestic partnerships, including: Orange, Volusia, Pinellas, Palm Beach, Broward, and Miami-Dade Counties, Gainesville, Coral Gables, Sarasota, Clearwater, St. Petersburg, Gulfport, Tampa, Orlando, Key West, North Miami, Miami Beach, and Tavares.¹⁹ According to Equality Florida, a civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender community, 6.7 million Floridians currently live within jurisdictions that grant access to domestic partner benefits and protections either through partnership registries or public employee benefits programs.²⁰ Eleven of the jurisdictions with domestic partnership registry ordinances report a total of 9,741 couples currently registered.²¹

The terms of the Florida domestic partnership ordinances, like the civil union and domestic partnership laws nationwide, vary widely in the extent of the rights conferred. Early ordinances, such as Miami-Dade's, are more limited.²² Later-adopted ordinances, beginning with the 2012 enactment by the City of Orlando which has become a model for many of the more recently adopted ordinances, cover the broader range of rights as described above.²³

In 2000, the Broward County ordinance survived a legal challenge that it encroached upon an area of exclusive state authority in violation of article VII, section 1(g) of the Florida Constitution, which states:

CHARTER GOVERNMENT. Counties operating under county charters shall have all power of local self-government not inconsistent with general law, or with special law approved by the vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law....²⁴

¹⁸ Oregon, California, Nevada, New Jersey, Illinois, Delaware, Hawaii. Rhode Island, Maine, D.C., Wisconsin, Nat'l Conference of State Legislatures, *Civil Unions and Domestic Partnership Statutes.*, (updated Nov. 2012) <http://www.ncsl.org/issues-research/human-services/civil-unions-and-domestic-partnership-statutes.aspx> (last visited Feb. 12, 2013).

¹⁹ Email from Mallory Wells, Public Policy Director, Equality Florida, to the Senate Children, Families, and Elder Affairs Committee staff (Feb. 11, 2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

²⁰ Equality Fla. Institute Inc., *Legal Handbook for LGBT Floridians and Their Families*, 24, (Jan. 4, 2012) [hereinafter *Handbook*], available at <http://eqfl.org/sites/default/files/publications/Legal-Handbook-for-LGBT-Floridians-and-Their-Families.pdf> (last visited Feb. 12, 2013).

²¹ Ordinance in two jurisdictions are not yet in effect. Data from the remaining five jurisdictions were not available in time for this analysis.

²² The Miami-Dade ordinance extends to county employees and their partners all insurance benefits, leave benefits (including family leave), and other benefits as are available to married employees; and extends to all registered partners healthcare facility visitation rights and visitation rights at county correctional and juvenile detention centers. .Miami-Dade County, Fla., Code of Ordinances, Sections 11A-75, 11A-76, and 11A-77 (March 6, 2012).

²³ Some rights conferred by these later-adopted ordinances have the effect of codifying rights that are already available from other sources. For example, health care decisions may be directed pursuant to ch.765, F.S. Likewise, rules issued by the Centers for Medicare & Medicaid Services prohibit Medicare- and Medicaid-participating hospitals from denying visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. News Release, U.S. Dept. of Health and Human Services, *Medicare finalizes new rules to require equal visitation rights for all hospital patients* (Nov. 10, 2010) <http://www.hhs.gov/news/press/2010pres/11/20101117a.html> (last visited Feb. 12, 2013).

²⁴ *Lowe v. Broward County*, 766 So.2d 1199, 1203 (Fla. 4th DCA 2000).

While the court agreed that the law of domestic relations is one matter reserved for the state, the court found that the Broward ordinance did not legislate within the zone of domestic issues that would be off limits.

The [ordinance] does not curtail any existing rights incident to a legal marriage, nor does it alter the shape of the marital relationship recognized by Florida law ... [T]he Act does not address the panoply of statutory rights and obligations exclusive to the traditional marriage relationship The Act does not create a legal relationship that, because of the interest of the state, gives rise to rights and obligations that survive the termination of the relationship. Unlike a traditional marriage, a domestic partnership is purely contractual, based on the mutual agreement of the parties.²⁵

Following the same line of analysis, the court also rejected an argument that the ordinance was preempted by s. 741.212, F.S., which prohibits marriage between individuals of the same sex, or “relationships between persons of the same sex which are treated as marriages in any jurisdiction”²⁶ The court found that the statute is directed at same-sex marriage or its equivalent and that the ordinance neither created a “marriage-like” relationship, nor was it limited to individuals of the same sex.²⁷

A registry provides an administrative system that establishes recognition of a domestic partnership. However, a domestic partnership may also be created by executing a civil contract between two unmarried people codifying how they wish to define their property and support rights both during a relationship and when it ends. A partnership agreement, which is a binding contract, may include provisions related to support, expenses, and finances; division of assets and liabilities on separation or termination; and rights in each other’s estate upon death or disability.²⁸ In the absence of a domestic partnership agreement, separate legal documents, such as a health care proxy or medical power of attorney, durable power of attorney, joint tenancy agreement or co-tenancy agreement, will, burial instructions or declaration as to remains, or cohabitation agreement may also define a relationship with a partner.

Florida courts have affirmed the validity of domestic partnership agreements. The Fifth District Court of Appeal found that an agreement for support between two unmarried people is valid, unless “inseparably based upon illicit consideration of sexual services.” In reaching its holding, the court considered the matter as one of individuals who, in the absence of the recognition of rights that flow naturally from a marital relationship, were exercising their constitutional private property and contract rights, which the court commented would apply to same-sex and opposite-sex unmarried couples alike.²⁹ The opinion was controversial at the time it was rendered and

²⁵ *Id.* at 1205-1206.

²⁶ Section 741.212, F.S.

²⁷ *Lowe*, *supra* note 22, at 1208.

²⁸ *Handbook*, *supra* note 18.

²⁹ *Posik v. Layton*, 695 So.2d 759, 762 (Fla. 5th DCA 1997). *But see Wakeman v. Dixon* 921 So.2d 669 (Fla. 1st DCA 2006, *reh’g denied* Feb. 28, 2006) (finding that an agreement executed between same-sex partners creates no enforceable rights regarding children).

critics contended it ignored the then recently-passed law creating s. 741.211, F.S., which prohibits marriage between same-sex partners.³⁰

Unmarried-Partner Households

The U.S. Census reports that:

Census 2000 enumerated 105 million households in the United States, of which the majority (52 percent) were maintained by married couples (54.5 million. A reflection of changing life styles is mirrored in Census 2000's enumeration of 5.5 million couples who were living together but who were not married, up from 3.2 million in 1990. These unmarried-partner households were selfidentified [sic] on the census form as being maintained by people who were sharing living quarters and who also had a close personal relationship with each other. The majority of these unmarried-partner households had partners of the opposite sex (4.9 million) but about 1 in 9 (594,000) had partners of the same sex.³¹

Of the 6.3 million households in Florida, 56 percent were married couple households. Unmarried-partner households totaled 369,622, or 10.4 percent of all coupled households. The majority of Florida's unmarried-partner households had partners of the opposite sex (328,574, or 9.2 percent of coupled holds), and 41,048 (1.2 percent of coupled households) had partners of the same sex.³²

III. Effect of Proposed Changes:

Sections 1 – 5 and 7 - 13 amend various provisions of the Florida Statutes to add parallel references to “domestic partnership” or “domestic partner” where references to “marriage” or “spouse” currently appear. The effect is to extend the rights or responsibilities of the statute to domestic partnerships; however, the bill does not otherwise change the underlying provision. The new references are added in statutes pertaining to:

- Mandatory and discretionary fees collected by clerks of court for filing petitions and records of dissolution of marriage (s. 28.101, F.S.);
- Service charges collected by clerks of court related to marriage licenses (s. 28.24, F.S.);
- Notice of name change due to marriage provided to the supervisor of elections (s. 97.1031, F.S.);
- The definition of “dissolution of marriage” as used in ch.382, F.S., relating to Vital Statistics (s. 382.002, F.S.);
- The responsibility of DOH to examine marriage certificate reports received from the county and circuit court (s. 382.003, F.S.);
- Reports transmitted to the DOH from the county and circuit court related to marriage licenses (s. 382.021, F.S.);

³⁰ Brett A. Barfield, *Are Same-Sex Prenuptial Agreements Enforceable in Florida? Posik v. Layton, Law and Policy*, 10 ST. THOMAS L. REV. 407, (Winter, 1998).

³¹ U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000, Census Special Reports* (Feb. 2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (last visited Feb. 12, 2013).

³² *Id.*

- The use of fees collected on marriage license applications to defray the cost incurred of maintaining marriage records (s. 382.022, F.S.);
- The use of fees collected for filing dissolution of marriage judgments to defray the cost incurred of maintaining dissolution-of-marriage records (s. 382.023, F.S.);
- The duty of DOH to provide certified copies of vital records (s. 382.025, F.S.);
- Fees collected by DOH for commemorative marriage records (s. 382.0255, F.S.);
- The authority of the Displaced Homemaker Trust Fund to receive funds generated by the additional fee on marriage license application and dissolution of marriage filings (s. 446.50, F.S.); and
- The definition of “family or household member” as the term is used in ss. 741.28-741.31, F.S., relating to domestic violence (s. 741.28, F.S.).

Section 6 amends s. 382.0085, F.S., to correct a cross-reference.

Section 14 creates s. 741.501, F.S., to provide legislative findings related to establishing and defining the rights and responsibilities of domestic partners. The bill finds: that a significant number of individuals live together in committed, familial relationships that involve personal, emotional, and economic commitments; these relationships assist the state by providing a network of support for the well-being of the participants; the state has an interest in promoting families and believes that all families should be able to obtain necessary legal protections and status; while there are some institutions that currently recognize domestic partnerships, these generally provide only limited rights and marriage is the primary or exclusive source of numerous other rights and responsibilities; the Legislature does not seek to alter the definition of marriage in article I, section 27 of the Florida Constitution, but finds that recognition of domestic partnerships provides an alternative mechanism for extending certain important rights and responsibilities; the decision to seek a ceremony or blessing over a domestic partnership is an individual choice and not a requirement of the bill; and these relationships provide material and other support to the participants and should be recognized and made uniform by law.

Section 15 creates s. 741.502, F.S., to provide definitions of “department,” “domestic partnership,” and “partner” as the terms are used in ss. 741.501-741.511, F.S. Specifically, “department” means DOH; a “domestic partnership” is a civil contract between two individuals who are at least 18 years of age, at least one of which is a Florida resident; and “partner” is someone joined in a domestic partnership.

Section 16 creates s. 741.503, F.S. to require DOH to prepare “Declaration of Domestic Partnership” and “Certificate of Registered Domestic Partnership” forms for distribution to each clerk of the court and the public.

Section 17 creates s. 741.504, F.S., to give the circuit court jurisdiction over proceedings relating to the rights and obligations of domestic partners. The bill requires the clerk of the court to maintain a registry of all domestic partnerships as a public record and to record all certificates of domestic partnership.

Section 18 creates s. 741.505, F.S., to establish the requirements of a domestic partnership that is recognized by the state. Specifically, the individuals must file a declaration that contains a statement attesting that each is 18 years of age or older, subject to reasonable proof of age by the

clerk, which may include proof by affidavit of a third party; a statement attesting that at least one person is a resident of the state; each person's mailing address; a statement consenting to the jurisdiction of the circuit courts in proceedings relating to the partnership; notarized signatures of both individuals; and a statement attesting to the truth of information set forth on the form. An individual who provides intentionally and materially false information commits a misdemeanor of the first degree. A clerk must register all partnerships that meet the legal requirements and issue the partners a certificate of registration that contains the clerk's seal.

Section 19 creates s. 741.507, F.S., to authorize a person who enters into a domestic partnership to retain or change his or her surname or, if changed, to return to the original surname during the partnership.

Section 20 creates s. 741.507, F.S., to establish the rights and responsibilities of individuals who are or were in a domestic partnership. The bill provides that any privilege, immunity, right, or benefit granted or any responsibility imposed by law, rule, or policy on an individual by marriage as an in-law is granted on equivalent terms to an individual who is or was in a domestic partnership or who is an in-law of a person who is in a domestic partnership. Any privilege, immunity, right, or benefit granted or any responsibility imposed by law, rule, or policy on a spouse, or on a former or surviving spouse, with respect to a child of either spouse is likewise granted or imposed on equivalent terms to an individual in a domestic partnership, or to a former or surviving partner, with respect to a child of either of the partners. The bill confers the same privileges, immunities, rights, benefits, and responsibilities that are granted under the tax laws of the state to spouses in a marriage, surviving spouses, and their children to partners or surviving partners of a domestic partnership, and their children. The bill acknowledges that the Legislature lacks jurisdiction to affect the control or implementation of federal laws. The bill does not require or permit the extension of any benefit under a retirement, deferred compensation, or other employee benefit plan, if the plan administrator reasonably believes doing so would affect the tax qualification or other favorable tax treatment of the plan under the Internal Revenue Service Code, and does not require the extension of a benefit under a plan that is regulated under the Employee Retirement Income Security Act of 1974.

Section 21 creates s. 741.508, F.S., to set forth circumstances under which a domestic partnership is prohibited or void. These include: when either partner currently has a different partner, wife, or husband who is alive; when the parties are related by lineal consanguinity or are siblings, or one is the niece or nephew of the other; or when either party lacks capacity to make or consent to a civil contract for want of legal age or sufficient understanding. A partnership is void if consent is coerced by force or fraud. A person may not file a new declaration of partnership or become married to someone other than the person with whom the partnership is registered, unless the previous domestic partnership has ended by judgment of dissolution or annulment or one partner has died.

Section 22 creates s. 741.509, F.S. to authorize the clerk of the court to collect the following fees: \$2 for receiving a declaration of domestic partnership; \$25 to be deposited in the Domestic Violence Trust Fund; \$7.50 for deposit in the Displaced Homemaker Trust Fund; \$25 for deposit into the General Revenue Fund; \$4 for distribution to DOH, pursuant to s. 382.022, F.S., to defray the cost of maintaining the vital statistics records. The bill allows an applicant who cannot afford a lump sum payment to pay the fees in three installments over a 90-day period.

Section 23 creates s. 741.510, F.S., to allow a domestic partnership to be proved by affidavit if the declaration has not been received or registered, as required by s. 741.505, F.S.; a certificate has been lost; or the certificate cannot be obtained by reason of death or other cause. The affidavit must be made by two witnesses who saw the declaration be executed and before an officer authorized to administer oaths. The affidavit may be filed and recorded with the clerk of the court with the same force and effect as if a certificate had been recorded.

Section 24 creates s. 741.511, F.S., to set forth procedures for terminating a domestic partnership. A state-registered partnership may be terminated by filing notice with DOH and paying a filing fee. The notice must be signed by one or both parties and notarized. If not signed by both parties, the notice must be accompanied by an affidavit stating that the party whose signature is missing has been served in writing, in the manner prescribed for civil summons; that a notice of termination is being filed; or that the party seeking termination has been unable to locate the party after reasonable effort and that notice has been made by publication. Notice by publication may be made as provided in ch. 50, F.S., relating to Legal and Official Advertisements, in the county where the domestic partners most recently resided. Termination of the partnership occurs 90 days after the notice of termination is filed and the fee paid. The bill requires DOH to register the notice of termination and issue a certificate of termination to each party. A partnership will also terminate if one or both parties marries either each other or someone else. The bill authorizes DOH to collect a fee, set by rule in an amount not to exceed \$50, to defray the cost of filing.

Section 25 reenacts s. 921.0024(1)(b), F.S., relating to the worksheet form for the Criminal Punishment Code, to incorporate the amendments made to s. 741.28, F.S., in a reference thereto.

Section 26 reenacts s. 943.171(2)(b), F.S., relating to the basic skills training for domestic violence cases, to incorporate the amendments made to s. 741.28, F.S., in a reference thereto.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill confers on partners, surviving partners, and their children all rights and responsibilities they would have if the partners are or were married. Thus, the bill will require local governments to extend benefits to their employees consistent with the requirements applicable to private sector employees which are described in the Private Sector Impact of this analysis. Whether that cost meets the threshold of Article VII, Section 18, relating to mandates, is difficult to estimate because of the uncertainty in projecting how many individuals would receive coverage and estimating the per capita cost to each local government of extending the benefit.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Whether the bill creates “a legal union that is treated as marriage or the substantial equivalent thereof” in violation of article I, section 27 of the Florida Constitution would be a matter of first impression in the courts. However, *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment*, 926 So.2d 1229 (Fla. 2006) discussed above, suggests that a domestic partnership is not per se “the substantial equivalent” of marriage.

The plain meaning of these words, according to dictionary definition, is clear that the chief purpose of the amendment is to ensure that unions between same-sex couples that are treated *virtually identically* to marriage will not be recognized in Florida.³³

Stated differently, the case indicates that all non-traditional unions are not prohibited by the constitution, only those that exceed some as yet legally untested threshold on the continuum of relationships approaching marriage. A recent Wisconsin case sets forth an analytical framework that a Florida court might use in making the determination. Similar to the Florida Constitution, the Wisconsin Constitution recognizes only marriage between a man and a woman and prohibits a “legal status identical or substantially similar to that of marriage” for unmarried partners. To determine whether its domestic partnership law created a status that was substantially similar to marriage, a Wisconsin Court of Appeals compared the requirements for eligibility, formation, rights and obligations, and termination that applied to marriage and domestic partnership.³⁴ The case is not binding precedent in Florida; it serves only as a model Florida could adopt.

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

The bill imposes 14 fees or other charges on actions required to create, terminate, or obtain records related to a domestic partnership. With one exception, these same fees apply today in actions required to create, dissolve, or obtain records related to a marriage. Thus, subject to the one exception, the fees are not newly-created. They do, however, impose on citizens who choose to avail themselves of the law a financial obligation they do not have today.

The fiscal impact on revenues to the State Courts Revenue Trust Fund and the Court Education Trust Fund from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting in the addition of dissolutions of domestic partnerships.

³³ *Advisory Opinion* at 1237 (emphasis supplied).

³⁴ *Apling v. Doyle*, Appeal No. 2011AP1572, Wisconsin Court of Appeals, 4th Dist. (Dec. 20, 2012).

B. Private Sector Impact:

The fiscal impact on the private sector is indeterminate. The bill confers on partners, surviving partners, and their children all rights and responsibilities they would have if the partners are or were married. At a minimum, this would require employers who offer health or other insurance benefits, such as disability or life, that include spouse or family coverage to extend coverage to a new group of beneficiaries, unless the employer has already made the coverage available voluntarily. The same would be true of retirement benefits unless one of the exceptions in the bill applied. Currently, there is a distinction in the federal tax code that results in a higher tax obligation on both employees who elect coverage for same-sex partners and their employers. The cost of coverage cannot be paid with pretax dollars, thus the estimated value of the employer's financial contribution towards health insurance coverage for non-dependent same-sex partners must be reported as taxable wages. The coverage is not taxable, however, if the partner qualifies as a dependent of the employee.

C. Government Sector Impact:

The Department of Health indicates the bill will require the Bureau of Vital Statistics to create a new computerized registration module in order to register and key-enter domestic partnership and dissolution of domestic partnerships into the official records database. The module will need to contain accounting and certification functions allowing for acceptance of payment and issuance of certified copies from authorized applicants. The bill also requires the DOH to create and print new forms; to design a new commemorative certificate; and to distribute forms and certificates, as necessary.

The primary fiscal impact will be the cost of the registration module, forms, and staff time to manage the increased workload. The DOH was not able to obtain data from other states' experience to estimate these costs, so it used an estimate of 10 percent of its marriage file, or 14,000 forms for each format. Estimated costs are:

Fiscal Impact	Fiscal Year 2013-14
Personnel: 1 FTE	\$22,765
Expenses	\$55,406
TOTAL	\$78,171

The DOH will receive a filing fee for each domestic partnership and dissolution of domestic partnership filed by the clerk of court and a certified copy fee for each record issued to authorized applicants.³⁵ Relying on the DOH's number of 14,000 records, fees authorized in the bill - \$4/application; \$5.97/dissolution, plus an additional fee of up to \$50, as determined by rule - will more than offset these costs.

³⁵ Dep't of Health, *Bill Analysis SB 196* (Jan. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

The fiscal impact on the State Group Health Insurance is indeterminate. Factors affecting costs include the number of beneficiaries who enroll as a result of the bill, as well as their health status. If the new beneficiaries are healthy, the overall impact would be positive. If they are unhealthy, it would be negative. Paid claims in the first year will have a direct impact on the state in all plan options that are currently self-funded, and will have an impact in the second year, when providers adjust rates based on claims experience, for all other plans. The tax impact described in the Private Sector Impact of this analysis would be the same for the State of Florida. There will also be workload costs associated with the expanded coverage.

The fiscal impact on the Florida Retirement System is also indeterminate. Individuals who are retired as of the date the bill takes effect would not be eligible for the extended benefit because of provisions of law that prohibit changes in benefit choices once finalized. The impact resulting from the extension of benefits to current and future employees would need to be determined by an actuarial study, but could be significant. There would also be an expense associated with reprinting retirement brochures and related materials.

VI. Technical Deficiencies:

In section 8, a reference needs to be inserted s. 741.509(1)(d), F.S., which creates the authority for the clerk of court to collect the \$4 fee on applications for registration of a domestic partnership that is distributed to DOH pursuant to s. 382.022, F.S.

In section 17, language should be added that sets out the responsibility of the clerk to transmit all declarations of domestic partnership and judgments of dissolution to DOH. This parallels language in ss. 382.022 and. 382.023, F.S., related to vital statistics.

On line 522, the language “Notwithstanding s. 61.021,F.S.,” should be struck because it refers to a provision in the statutes relating to dissolution of marriage that has no bearing on domestic partnerships.

Lines 554 and 562 confer the rights and responsibilities that result because someone is related “by marriage as an in-law” on individuals in a domestic partnership; however, it is not clear what the term is intended to include.

On lines 583 – 584, the use of the term “of partners in a domestic partnership” could be construed to limit the rights under the tax laws to children of an intact partnership, only.

Line 658, the word “appropriate” should be deleted and the words “provided in subsection (1)” added to specify more clearly how fees collected by clerks of courts for registering domestic partnerships are distributed.

Section 24, which creates a process for terminating domestic partnerships pursuant to an administrative action of DOH, is inconsistent with other provision in the bill which require the clerk of court to maintain the registry.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. **Amendments:**

None.

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