

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, March 15, 2021**TIME:** 3:30—6:00 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Brandes, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, Rouson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	CS/SB 496 Community Affairs / Perry (Similar CS/CS/CS/H 59)	Growth Management; Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances, etc. CA 03/03/2021 Fav/CS JU 03/15/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0
2	SB 954 Bean (Identical H 625)	Attorney Compensation; Authorizing certain compensation for services of attorneys in formal estate administration to be based on the compensable value of the estate; deleting a presumption that such compensation is reasonable if it is based on the compensable value of the estate, etc. JU 03/15/2021 Fav/CS CM RC	Fav/CS Yeas 8 Nays 3

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Judiciary

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1802 Pizzo (Identical H 583)	Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders; Providing an exception to prohibitions on interception and recording of communications when the communication is received in violation of a specified injunction or order; limiting the use of the intercepted communication to evidencing a violation of the specified injunction or order, etc. JU 03/15/2021 Favorable CJ RC	Favorable Yeas 11 Nays 0
4	SB 1972 Pizzo (Identical H 841, Compare H 843, Linked S 1974)	Expunction and Sealing of Judicial Records; Providing for sealing of a petition for a domestic violence injunction and related documents if the petition was withdrawn or dismissed, or if there was a ruling in favor of the respondent; exempting expunctions sought for cases dismissed or nolle prosequi or that resulted in an acquittal from the limit on the number of expunctions that may be sought; expanding an exception to an eligibility requirement for expunction of a criminal history record to allow expunction for an offense committed when the person was a minor, etc. JU 03/15/2021 Favorable CJ RC	Favorable Yeas 11 Nays 0
5	SB 1974 Pizzo (Similar H 843, Compare H 841, Linked S 1972)	Public Records/Domestic Violence Injunction; Providing that all pleadings and documents related to a petition domestic violence injunction that have been ordered to be sealed are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 03/15/2021 Favorable CJ RC	Favorable Yeas 11 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 368 Baxley (Similar H 441)	Elder-focused Dispute Resolution Process; Authorizing the courts to appoint an eldercaring coordinator and refer certain parties and elders to eldercaring coordination; prohibiting the courts from referring certain parties to eldercaring coordination without the consent of the elder and other parties to the action; requiring the courts to conduct intermittent review hearings regarding the conclusion or extension of such appointments; requiring that notice of hearing on removal of a coordinator be timely served; requiring the court to appoint successor eldercaring coordinators under certain circumstances, etc. CF 02/03/2021 Favorable JU 03/15/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
7	CS/SB 400 Governmental Oversight and Accountability / Rodrigues (Identical CS/H 913)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing an action for declaratory relief against the requester, etc. GO 01/27/2021 Fav/CS JU 03/15/2021 Favorable RC	Favorable Yeas 11 Nays 0
8	SB 1378 Bradley (Compare H 1523)	Corporate Espionage; Citing this act as the "Eliminating Corporate Espionage in Florida Act"; prohibiting receipt of unlawfully obtained trade secrets; reclassifying the penalty and increasing the offense severity ranking for receiving, obtaining, or using trade secrets to benefit a foreign government, foreign agent, or other foreign entity; requiring a court to order specified restitution for a violation, etc. CJ 03/09/2021 Favorable JU 03/15/2021 Fav/CS RC	Fav/CS Yeas 10 Nays 0
9	SB 468 Bracy (Identical H 189, Compare H 191, H 343, H 1597, S 710, S 1916, Linked S 470)	Expunction of Criminal History Records Relating to Certain Cannabis Offenses; Authorizing certain courts to order criminal justice agencies to expunge the criminal history record of an individual with a qualified cannabis offense upon such individual filing a petition for expunction; authorizing an individual to petition for expunction of such criminal history records at any time; providing requirements if the state attorney or the arresting agency object to the court granting the petition; prohibiting a court or criminal justice agency from charging the petitioner fees in connection with the petition, etc. JU 03/15/2021 Fav/CS CJ AP	Fav/CS Yeas 10 Nays 0

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Judiciary

Monday, March 15, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 470 Bracy (Identical H 191, Compare H 189, Linked S 468)	Public Records/Expunged Criminal History Records; Providing an exemption from public records requirements for specified expunged criminal history records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 03/15/2021 Fav/CS CJ AP	Fav/CS Yeas 10 Nays 0
11	SB 1346 Brandes	Felony Settlement Conferences; Authorizing circuit courts to establish settlement conferences in felony matters; requiring settlement conferences to be presided over by a settlement conference judge; specifying requirements for settlement conference judges; prohibiting the trial judge presiding over the pending matter from presiding over the felony settlement conference; authorizing circuit courts using felony settlement conferences to adopt procedures, etc. JU 03/15/2021 Favorable CJ RC	Favorable Yeas 11 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 Judiciary

BILL: CS/CS/SB 496

INTRODUCER: Judiciary Committee, Community Affairs Committee, and Senator Perry

SUBJECT: Growth Management

DATE: March 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 496 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, must incorporate development orders existing before the plan's effective date. The plan may not impair the completion of a development with such a development order and must vest the density and intensity approved by the development order.
- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during the next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, and were valid on or before April 6, 2018, to be amended, including amendments exchanging land uses under certain circumstances.

The bill provides a declaration that the act fulfills an important state interest.

The effective date of this bill is July 1, 2021.

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹ The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.²

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date.³ The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density⁴ and intensity⁵ approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.⁶

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date, may not impair the completion of a development with such a development order, and must vest the density and intensity approved by such a development order.

¹ See ch. 2011-139, s. 4, Laws of Fla.

² *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)

³ See ch. 2019-165, s. 3, Laws of Fla.

⁴ Section 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

⁵ Section 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

⁶ Sections 163.3167(3) and 163.3203, F.S.

Private Property Rights and the Community Planning Act (Section 2)

Present Situation

Constitutional Private Property Rights

Under article I, section 2 of the Florida Constitution's Declaration of Rights, individuals are guaranteed the right "to acquire, possess, and protect property."⁷ Although these property rights are enshrined in the Florida Constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."⁸ Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.⁹ Regarding private property rights, courts have continuously held that "even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.'"¹⁰

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.¹¹ In the *City of Coral Gables v. Wood*, the court ruled that "[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare."¹² In the first constitutional challenge, government action is simply invalid under the Constitution's due process clause.¹³

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).¹⁴ When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or productive use of the property.¹⁵ In the second constitutional challenge, the government action is invalid absent compensation. So the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.¹⁶

⁷ FLA. CONST. art. I, s. 2.

⁸ U.S. CONST. amend. X.

⁹ "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." See *NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

¹⁰ *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).

¹¹ See U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; see also *Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).

¹² *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).

¹³ See *Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).

¹⁴ See FLA. CONST. art X, s. 6.

¹⁵ See *Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).

¹⁶ See *Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).

Since these constitutional protections were enacted, the scale of government and land use regulation has considerably expanded. Still, courts have been reluctant to afford relief to property owners under these constitutional challenges.¹⁷ Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.¹⁸

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the “Bert J. Harris, Jr., Private Property Rights Protection Act” (hereinafter the “Harris Act”).¹⁹

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Harris Act²⁰ entitles private property owners to relief when a governmental entity’s specific action inordinately burdens the owner’s existing use of the real property or a vested right to a specific use of the real property.²¹ The Harris Act recognizes that the excessive burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.²² The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.²³

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity’s development order or enforcement action is unreasonable or unfairly burdens the use of the owner’s real property,²⁴ or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.²⁵ A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.²⁶

The Community Planning Act

The Harris Act is balanced against the state’s sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state’s continued growth and development.²⁷ Statutes govern how the state and local governments direct land development²⁸ with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.²⁹

¹⁷ See Cooper, Weaver, and ‘Connor, The Florida Bar, Florida Real Property Litigation, *Statutory Private Property Rights Protection*, s.13.1 (2018).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 70.001(1), F.S.

²¹ Section 70.001(2), F.S.

²² Section 70.001(1), F.S.

²³ Section 70.001(3)(c), F.S.

²⁴ Section 70.51(3), F.S.

²⁵ Section 70.45(2), F.S.

²⁶ Section 70.45(1)(c), F.S.

²⁷ See s. 186.002(1)(b), F.S.

²⁸ See ch. 186, 187, and 163, part II, F.S.

²⁹ Section 163.3167(1)(b), F.S.

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.³⁰ The authority provided by the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.³¹

The State Comprehensive Plan must provide long-range policy guidance for the state's orderly social, economic, and physical growth.³² The State Comprehensive Plan's goals and policies must be consistent with the protection of private property rights.³³ The State Comprehensive Plan must be reviewed every 2 years by the Legislature, and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.³⁴

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development that reflects community commitments to implement the plan and its elements.³⁵ Plans are also required to identify procedures for monitoring, evaluating, and appraising the plan's implementation.³⁶ Plans may include optional elements³⁷ but must include the following nine elements:

- Capital improvements;³⁸
- Future land use plan;³⁹
- Intergovernmental coordination;⁴⁰
- Conservation;⁴¹
- Transportation;⁴²
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;⁴³
- Recreation and open space;⁴⁴
- Housing;⁴⁵ and
- Coastal management (for coastal local governments).⁴⁶

³⁰ See s. 163.3161(10), F.S.; see also s. 187.101(3), F.S.

³¹ *Id.*

³² Section 187.101(1), F.S.

³³ Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

³⁴ Section 187.101(1), F.S.

³⁵ Section 163.3177(1), F.S.

³⁶ Section 163.3177(1)(d), F.S.

³⁷ Section 163.3177(1)(a), F.S.

³⁸ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

³⁹ Section 163.3177(6)(a), F.S.

⁴⁰ Section 163.3177(6)(h), F.S.

⁴¹ Section 163.3177(6)(d), F.S.

⁴² Section 163.3177(6)(b), F.S.

⁴³ Section 163.3177(6)(c), F.S.

⁴⁴ Section 163.3177(6)(e), F.S.

⁴⁵ Section 163.3177(6)(f), F.S.

⁴⁶ Section 163.3177(6)(g), F.S.

All local government land development regulations must be consistent with the local comprehensive plan.⁴⁷ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.⁴⁸ However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.⁴⁹

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.⁵⁰ Within 1 year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.⁵¹ A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.⁵²

Generally, a local government amending its comprehensive plan must follow an expedited state review process.⁵³ Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process to adopt comprehensive plans.⁵⁴ Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.⁵⁵ The Department of Economic Opportunity (DEO) is designated as the state land planning agency.⁵⁶

Under the state coordinated review process, local governments must hold a properly noticed public hearing⁵⁷ about the proposed amendment before sending it in for comment from several reviewing agencies,⁵⁸ including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.⁵⁹ Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.⁶⁰ Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.⁶¹

DEO must provide a written report within 60 days after receipt of the proposed amendment if it elects to review the amendment.⁶² The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral,

⁴⁷ Section 163.3194(1)(b), F.S.

⁴⁸ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

⁴⁹ Section 189.081(1)(b), F.S.

⁵⁰ Section 163.3191(1), F.S.

⁵¹ Section 163.3191(2), F.S.

⁵² Section 163.3161(12), F.S.

⁵³ Section 163.3184(3)(a), F.S.

⁵⁴ Section 163.3184(2)(c), F.S.

⁵⁵ Section 163.3184(4)(a), F.S.

⁵⁶ Section 163.3164(44), F.S.

⁵⁷ Sections 163.3184(4)(b) and (11)(b)1., F.S.

⁵⁸ See s. 163.3184(1)(c), F.S., for a complete list of all reviewing agencies.

⁵⁹ Section 163.3184(4)(b) and (c), F.S.

⁶⁰ Section 163.3184(4)(b), F.S.

⁶¹ Section 163.3184(4)(c), F.S.

⁶² Section 163.3184(4)(d)1., F.S.

comments.⁶³ Within 180 days after receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.⁶⁴ Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.⁶⁵

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law⁶⁶ and to issue on its website a notice of intent finding whether or not the amendment is compliant.⁶⁷ A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.⁶⁸ Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.⁶⁹ If there is a timely challenge, then the plan amendment will not take effect until DEO or the Administration Commission⁷⁰ enters a final order determining whether the adopted amendment complies with the law.⁷¹

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights;
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others;
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances;
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property; and

⁶³ Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. *See* s. 163.3184(4)(d)2., F.S.

⁶⁴ Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. *See* s. 163.3184(4)(e)1., F.S.

⁶⁵ Section 163.3184(4)(e)2., F.S.

⁶⁶ Section 163.3184(4)(e)3. and 4., F.S.

⁶⁷ Section 163.3184(4)(e)4., F.S.

⁶⁸ *Id.*

⁶⁹ Section 163.3184(4)(e)5., F.S.

⁷⁰ Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).

⁷¹ *Id.*

- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 3)

Present Situation

Local governments may enter into development agreements with developers.⁷² A “development agreement” is a “contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.”⁷³

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.⁷⁴ A development agreement must include the following:⁷⁵

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date that any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government’s comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

⁷² Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the “Florida Local Government Development Agreement Act.”

⁷³ *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁷⁴ Section 163.3223, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁷⁵ Section 163.3227(1), F.S.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.⁷⁶ Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the circuit court clerk in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.⁷⁷

The requirements and benefits in a development agreement are binding and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,⁷⁸ also known as a successor in interest.⁷⁹ A development agreement may be amended or canceled by the parties' mutual consent to the agreement or by their successors in interest.⁸⁰

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification, or termination directly modifies the allowable uses or entitlements of an owner's property.

Developments of Regional Impact (Section 4)

Present Situation

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."⁸¹

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.⁸² The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.⁸³

The process to review or amend a DRI agreement and its implementing development orders went through several revisions⁸⁴ until the repeal of the requirements for state and regional reviews in

⁷⁶ Section 163.3227(2), F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁷⁷ Section 163.3239, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁷⁸ Section 163.3239, F.S.

⁷⁹ A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. BLACK'S LAW DICTIONARY 1473 (8th ed. 2004).

⁸⁰ Section 163.3237, F.S.

⁸¹ Section 380.06(1), F.S.

⁸² The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).

⁸³ Chapter 72-317, s. 6, Laws of Fla.

⁸⁴ See ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).

2018.⁸⁵ Local governments where a DRI is located are responsible for implementing and amending existing DRI agreements and development orders.⁸⁶

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date, the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:⁸⁷

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.⁸⁸ The local government must review a proposed change reducing the originally approved height, density, or intensity of the development based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.⁸⁹

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.⁹⁰

For such agreements, a DRI is essentially built out if:⁹¹

- All the mitigation requirements in the development order were satisfied, all developers complied with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer

⁸⁵ Chapter 2018-158, Laws of Fla.

⁸⁶ Sections 380.06(4)(a) and (7), F.S.

⁸⁷ Section 380.06(4)(a), F.S.

⁸⁸ Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.

⁸⁹ Section 380.06(7)(a), F.S.

⁹⁰ Chapter 2018-158, s. 1, Laws of Fla.

⁹¹ Sections 380.06(15)(g)3. and 4., F.S. (2017).

demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the local government's processes for amending development orders.

Important State Interest (Section 5)

The bill states that the Legislature finds and declares that this act fulfills an important state interest.

Effective Date (Section 6)

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction by potentially causing counties and municipalities to incur some costs amending their comprehensive plans to add a private property rights element by July 1, 2023.

Notwithstanding, article VII, section 18(d), of the Florida Constitution provides eight exemptions to the mandate restrictions. The mandate exemption relevant to this bill is the exemption for "laws having insignificant fiscal impact[.]"⁹² For the Fiscal Year 2021-2022 the Senate's forecast for laws having a state-wide insignificant fiscal impact is \$2,189,391.90.⁹³ Thus, if Florida's 67 counties and 411 municipalities spend on average \$4,580.31 or less on the comprehensive plan amendment, the bill would be deemed to have an insignificant fiscal impact.

Complying with the bill may not necessitate a local government to expend additional funds beyond those already allocated to general government activities. Thus, the fiscal impact may be insignificant.

Still, if the judiciary determines that the bill is a mandate and no exemption or exception applies, the bill must have been approved by two-thirds of the membership of each house of the Legislature to be binding on local governments. The bill has the necessary determination that it fulfills an important state interest to be passed in this manner.

⁹² An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 24, 2021)

⁹³ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited Feb. 24, 2021).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 2 of CS/CS/SB 496 may have a negative fiscal impact on local governments by requiring each county and municipality to adopt a private property rights element into its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan. However, the minimum costs associated with amending a comprehensive plan may be absorbed by a local government's budgetary allocations for general government activities. Thus, the fiscal impact may be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3177, 163.3237, 337.25, and 380.06.

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

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

CS/CS by Judiciary on Mar 15, 2021:

The committee substitute removes the provision which required the Department of Transportation to afford the right of first refusal to the previous property owner when selling a parcel of land.

CS by Community Affairs on March 3, 2021:

The committee substitute:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, instead of January 1, 2019, must incorporate development orders existing before the comprehensive plan's effective date, may not impair the completion of a development an existing development order, and must vest the density and intensity approved by such development order.
- Revises the timeframe within which a local government must adopt a property rights element in its comprehensive plan. Instead of the July 1, 2023, deadline, the bill now requires local governments to adopt a property rights element by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Perry

578-02373-21

2021496c1

A bill to be entitled
An act relating to growth management; amending s.
163.3167, F.S.; specifying requirements for certain
comprehensive plans effective, rather than adopted,
after a specified date and for associated land
development regulations; amending s. 163.3177, F.S.;
requiring local governments to include a property
rights element in their comprehensive plans; providing
a statement of rights which a local government may
use; requiring a local government to adopt a property
rights element by the earlier of its adoption of its
next proposed plan amendment initiated after a certain
date or the next scheduled evaluation and appraisal of
its comprehensive plan; prohibiting a local
government's property rights element from conflicting
with the statement of rights contained in the act;
amending s. 163.3237, F.S.; providing that the consent
of certain property owners is not required for
development agreement changes under certain
circumstances; providing an exception; amending s.
337.25, F.S.; requiring the Department of
Transportation to afford a right of first refusal to
certain individuals under specified circumstances;
providing requirements and procedures for the right of
first refusal; amending s. 380.06, F.S.; authorizing
certain developments of regional impact agreements to
be amended under certain circumstances; providing
retroactive applicability; providing a declaration of
important state interest; providing an effective date.

578-02373-21

2021496c1

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

Section 1. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan for a newly incorporated municipality which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

578-02373-21

2021496c1

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights

578-02373-21

2021496c1

88 element in its comprehensive plan by the earlier of its adoption
89 of its next proposed plan amendment that is initiated after July
90 1, 2021, or the next scheduled evaluation and appraisal of its
91 comprehensive plan pursuant to s. 163.3191. If a local
92 government adopts its own property rights element, the element
93 may not conflict with the statement of rights provided in
94 subparagraph 1.

95 Section 3. Section 163.3237, Florida Statutes, is amended
96 to read:

97 163.3237 Amendment or cancellation of a development
98 agreement.—A development agreement may be amended or canceled by
99 mutual consent of the parties to the agreement or by their
100 successors in interest. A party or its designated successor in
101 interest to a development agreement and a local government may
102 amend or cancel a development agreement without securing the
103 consent of other parcel owners whose property was originally
104 subject to the development agreement, unless the amendment or
105 cancellation directly modifies the allowable uses or
106 entitlements of such owners' property.

107 Section 4. Subsection (4) of section 337.25, Florida
108 Statutes, is amended to read:

109 337.25 Acquisition, lease, and disposal of real and
110 personal property.—

111 (4) The department may convey, in the name of the state,
112 any land, building, or other property, real or personal, which
113 was acquired under subsection (1) and which the department has
114 determined is not needed for the construction, operation, and
115 maintenance of a transportation facility. When such a
116 determination has been made, property may be disposed of through

578-02373-21

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negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection may be made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal must be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property.

(a) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no

578-02373-21

2021496c1

146 consideration to the original donor or the donor's heirs,
147 successors, assigns, or representatives.

148 (b) If the property is to be used for a public purpose, the
149 property may be conveyed without consideration to a governmental
150 entity.

151 (c) If the property was originally acquired specifically to
152 provide replacement housing for persons displaced by
153 transportation projects, the department may negotiate for the
154 sale of such property as replacement housing. As compensation,
155 the state shall receive at least its investment in such property
156 or the department's current estimate of value, whichever is
157 lower. It is expressly intended that this benefit be extended
158 only to persons actually displaced by the project. Dispositions
159 to any other person must be for at least the department's
160 current estimate of value.

161 (d) If the department determines that the property requires
162 significant costs to be incurred or that continued ownership of
163 the property exposes the department to significant liability
164 risks, the department may use the projected maintenance costs
165 over the next 10 years to offset the property's value in
166 establishing a value for disposal of the property, even if that
167 value is zero.

168 (e) If, at the discretion of the department, a sale to a
169 person other than an abutting property owner would be
170 inequitable, the property may be sold to the abutting owner for
171 the department's current estimate of value.

172 Section 5. Paragraph (d) of subsection (4) of section
173 380.06, Florida Statutes, is amended to read:

174 380.06 Developments of regional impact.—

578-02373-21

2021496c1

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill #496**, relating to Growth Management, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

SB 496

Bill Number (if applicable)

Topic GROWTH MGT

Amendment Barcode (if applicable)

Name TRISHA NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA LANE

Phone 850 322 3317

Street

TALLY FL 32303

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing LEAGUE WOMEN VOTERS FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-15-21

Meeting Date

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

SB 496

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Pav Owens

Job Title President, 1000 Friends of Florida

Address 308 N. Monroe St.

Phone 407-222-2301

Street

Tallahassee, FL

32301

City

State

Zip

Email powense@1000fof.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-15-21

Meeting Date

496

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Jessica Lewis

Job Title Lobbyist

Address 200 College Ave
Street

Phone 910-617-2311

Tallahassee FL
City State Zip

Email j.lewis-lewis@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Sierra Club

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/15/21

Meeting Date

SB0496

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe St

Phone 850-629-4656

Street

Tallahassee

FL

32303

Email lindsay@fcvoters.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

15 March 21
Meeting Date

496
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Phone _____
Street

TLH Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

496

Bill Number (if applicable)

Topic SB 496

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title ~~Attorney~~ Attorney

Address 119 S. Monroe St Suite 300

Street

Phone 222-7500

Tallahassee

City

FL

State

32301

Zip

Email garyh@hgsblaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 954

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Attorney Compensation

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u> </u>	<u> </u>	<u>CM</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 954 removes the estate-value-based fee schedule that is currently in place for attorneys in a probate or trust administration.

Currently, the fee schedule provides that an attorney's fee is presumed reasonable if it conforms to a calculation based on a percentage of the value of the estate. A fee of \$55,000 for an estate valued at \$2 million, for example, is presumed reasonable regardless of the amount or complexity of work conducted by the attorney. A judge, however, may increase or decrease the compensation of an attorney upon petition by an interested party.

The bill removes the presumption that a fee based on the fee schedule is reasonable and instead requires an attorney to obtain a fee disclosure statement from a prospective client in a probate or trust administration. This disclosure statement is intended to inform a prospective client that the fee is subject to negotiation and not required to be based on the value of the estate. Likewise, the disclosure provides that selection of the attorney is at the discretion of the personal representative.

The bill takes effect July 1, 2021.

II. Present Situation:

Overview

Probate is a court supervised process for identifying and gathering the assets of a deceased person, paying his or her debts, and distributing those assets to beneficiaries.¹ A personal representative is appointed to execute this process, and the representative may retain an attorney using funds from the estate.²

Section 733.6171, F.S., allows for an attorney who represents a personal representative to be compensated based on a percentage of the value of the estate.³ The Legislature has amended this section several times since it was first enacted. These amendments have generally ranged from clarifying amendments to substantive new guidelines regarding attorney compensation. Importantly, attorneys are still bound by the *Rules Regulating the Florida Bar* when considering compensation from any client.⁴ Under the Bar rules, an attorney may not charge a “clearly excessive” fee or cost.

A fee or cost is clearly excessive when:

- (1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or
- (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.⁵

Additionally, a federal district court has found that the fact that “a fee charged by an attorney for a personal representative or a trust is *presumptively* reasonable or within the statutory limit under Florida law does not mean that it is *actually* reasonable.”⁶ (Emphasis added)

Reasonable fees, according to the Bar rules are determined by taking into account:

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

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, What is Probate? available at <https://www.floridabar.org/public/consumer/pamphlet026/#whatisprobate> (last visited Mar. 12, 2021).

² Section 733.106(2) & (3), F.S.

³ Section 733.6171(3), F.S.

⁴ Specifically, Rule 4-1.5, *Rules Regulating the Florida Bar*, covers attorney compensation.

⁵ *Id.*

⁶ *West v. Chrisman*, 518 B.R. 655 (M.D. Fla. 2014).

- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent.⁷

Reasonable costs, such as witness costs, may be considered by taking into account:

- The nature and extent of the disclosure made to the client about the costs;
- Whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;
- The actual amount charged by third party providers of services to the attorney;
- Whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;
- The reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and
- The relationship and past course of conduct between the lawyer and the client.⁸

Compensation for an Attorney Representing a Personal Representative, 1988

Previously, Section 733.617 (1988) covered the reasonable compensation of personal representatives as well as attorneys, accountants, appraisers, and other agents employed by the personal representative. The statute provided that “reasonable compensation *shall* be based on one or more of the following” (emphasis added):

- The time and labor required;
- The novelty and the difficulty of the questions involved, and the skill requisite to perform the service properly;
- The likelihood that the acceptance of the particular employment will preclude other employment by the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the assets of the estate, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The final results obtained;
- The time limitations imposed by the circumstances;
- The nature and length of the professional relationship with the decedent; and
- The experience, reputation, diligence, and ability of the person performing the service.⁹

Importantly, these provisions mirror the guidelines for attorney compensation provided in Rule 4-1.5(b)(1), *Rules Regulating the Florida Bar*.

1993 Legislation

In 1993, the Legislature created s. 733.6171, F.S., to differentiate the compensation of attorneys from others retained by a personal representative covered separately in s. 733.617, F.S.¹⁰ In contrast to the 1988 compensation structure, the new legislation allowed for attorney

⁷ R. Regulating Fla. Bar 4-1.5(b)(1).

⁸ R. Regulating Fla. Bar 4-1.5(b)(2).

⁹ Section 733.617(1), F.S. (1988).

¹⁰ See CS/HB 1295 (1993 Reg. Session).

compensation to be based on the value of the estate along with the work hours contributed.¹¹ Additionally, the statute allowed for two types of compensations: ordinary and extraordinary. While undefined, The Legislature presumably intended extraordinary compensation to apply to complex cases.¹²

Ordinary compensation was presumed reasonable if it was based on:

- An amount equal to 2 percent of the inventory value of the estate assets and the income earned by the estate during the administration and, if the estate is required to file an estate tax return, an additional 1 percent on the balance of the gross estate as finally determined for federal estate tax purposes; and
- An amount equal to the product of the number of hours reasonably expended, and a reasonable hourly rate for the attorney and for persons with special education, training, or experience, who are employed by and work under the supervision of the attorney and have furnished services in the estate administration.

The statute provided that an attorney's compensation based on the above standard could be *increased or decreased* by a court upon petition by an interested party. In determining reasonable compensation, the court would weigh various factors that were similar to the both the Fla Bar Rule 4-1.5(b)(1) and the 1988 statute. Thus, although a fee determined using the above guidelines was presumed reasonable, it was not definitive. One court, for example, awarded \$60,000 as opposed to \$265,236.57 as calculated under the statute. The court reasoned "the statute's only requirement is that attorneys receive reasonable compensation" and that the higher fee included under the calculation may not be reasonable considering the amount of time and skill required for the estate in question.¹³

Finally, the statute allows an attorney and personal representative to have an agreement determining compensation, so long as the manner of compensation was disclosed to parties bearing the impact of the compensation and there was no object. This specific provision remains in place in the current statute.

1995 Amendment

The Legislature amended s. 733.6171, F.S., in 1995 to provide a fee structure that is largely unchanged under current law. Specifically, compensation based on the value of the estate and the income earned by the estate was presumed reasonable based on the following schedule:

- \$1,500 for estates having a value of \$40,000 or less;
- An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000;
- An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000;
- For estates having a value in excess of \$100,000, at the rate of 3 percent on the next \$900,000;
- At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million;

¹¹ Section 733.617(3), F.S. (1993).

¹² The 1995 amendment, for example, provides a non-exhaustive list of eligible services that may be deemed "extraordinary" for the purpose of separate compensation. *See supra* note 11.

¹³ *Sitomer v. First of Am. Bank-Cent.*, 667 So. 2d 456, 458 (Fla. 4th DCA 1996).

- At the rate of 2 percent for all above \$3 million and not exceeding \$5 million;
- At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million; and
- At the rate of 1 percent for all above \$10 million.¹⁴

An attorney could be further compensated for any “extraordinary services,” such as more complex estates that may involve tax preparation or contested claims.¹⁵ The amendment still provided that compensation may be *increased* or *decreased* by a court upon petition by an interested party.¹⁶

Finally, the 1995 amendment provided a mechanism for a court to find an attorneys’ request for fees from the estate to be “substantially unreasonable.” The Legislature removed this language in a 2001 amendment.¹⁷

III. Effect of Proposed Changes:

The bill removes the estate-valued-based fee schedule that is currently in place for attorneys in a probate or trust administration. Under current law, a fee based on the fee schedule for compensation for *ordinary* services is presumed reasonable. An attorney could receive further

¹⁴ Section 733.6171(3), F.S. (1995).

¹⁵ Section 733.6171(4), F.S. (1995) further provided “Extraordinary services may include, but are not limited to:

(a) Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceeding, apportionment of estate taxes, or any adversarial proceeding or litigation by or against the estate.
 (b) Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.
 (c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.
 (d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.
 (e) Preparation of the estate’s federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.
 (f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.
 (g) Legal advice regarding carrying on of the decedent’s business or conducting other commercial activity by the personal representative.
 (h) Legal advice regarding claims for damage to the environment or related procedures.
 (i) Legal advice regarding homestead status of real property or proceedings involving that status and services related to protected homestead.
 (j) Involvement in fiduciary, employee, or attorney compensation disputes.
 (k) Proceedings involving ancillary administration of assets not subject to administration in this state.

¹⁶ Section 733.6171(5), F.S. (1995).

¹⁷ See CS/HB 137 (2001 Reg. Session).

compensation if he or she provided certain *extraordinary* services.¹⁸ Likewise, a court could increase or decrease compensation based on the particularities of a case. The bill removes these provisions. However, an attorney is ethically bound to charge reasonable fees under the *Rules Regulating the Florida Bar*.¹⁹

The bill creates a duty for an attorney to obtain a fee disclosure statement when representing an estate during a probate or trust administration. The fee disclosure statement will give notice to the client that the fee is not required to be based on the value of the estate and is subject to negotiation. Additionally, the disclosure must specify that the selection of an attorney is at the discretion of the personal representative and that the personal representative is not required to select the attorney who drafted the will.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁸ A non-exhaustive list of *extraordinary* services eligible for additional compensation for a trust administration is covered in Section 736.1007(5), F.S. For a probate administration, this is covered in Section 733.6171(4), F.S., *see supra* note 15.

¹⁹ *See supra* note 7.

B. Private Sector Impact:

CS/SB 954 may have a positive impact for consumers and families involved in probate and estate administrations. By removing the presumption that certain fees are *per se* reasonable, the bill may encourage market competition and negotiated fees or fees based on the work necessary to execute the estate as opposed to the estate's value.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 733.6171, 736.1007, 733.106, and 736.1005.

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

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

CS by Judiciary on March 15, 2021:

The committee substitute changes the bill by:

- Repealing the statutory attorney fee schedule for formal estate administration along with its presumption of reasonableness.
- Creating a fee disclosure statement that requires an attorney to make certain disclosures regarding fees when representing an estate in probate.

B. Amendments:

None.

By Senator Bean

4-01036-21

2021954__

A bill to be entitled
An act relating to attorney compensation; amending s.
733.6171, F.S.; authorizing certain compensation for
services of attorneys in formal estate administration
to be based on the compensable value of the estate;
deleting a presumption that such compensation is
reasonable if it is based on the compensable value of
the estate; providing an effective date.

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

Section 1. Subsection (3) of section 733.6171, Florida
Statutes, is amended to read:

733.6171 Compensation of attorney for the personal
representative.—

(3) Compensation for ordinary services of attorneys in
formal estate administration may be ~~is presumed to be reasonable~~
~~if~~ based on the compensable value of the estate, which is the
inventory value of the probate estate assets and the income
earned by the estate during the administration as provided in
the following schedule:

(a) One thousand five hundred dollars for estates having a
value of \$40,000 or less.

(b) An additional \$750 for estates having a value of more
than \$40,000 and not exceeding \$70,000.

(c) An additional \$750 for estates having a value of more
than \$70,000 and not exceeding \$100,000.

(d) For estates having a value in excess of \$100,000, at
the rate of 3 percent on the next \$900,000.

4-01036-21

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(e) At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million.

(f) At the rate of 2 percent for all above \$3 million and not exceeding \$5 million.

(g) At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million.

(h) At the rate of 1 percent for all above \$10 million.

Section 2. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 4, 2021

I respectfully request that **Senate Bill # 954**, relating to Attorney Compensation, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

SB 954

Bill Number (if applicable)

283472

Amendment Barcode (if applicable)

Topic Attorney Compensation

Name Kenneth Pratt

Job Title Senior VP of Government Affairs

Address 1001 Thomasville Rd Ste. 201
Street

Phone 850-509-8020

Tallahassee
City

FL
State

32301
Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21

Meeting Date

954

Bill Number (if applicable)

283472

Topic Attorney Compensation (Judiciary)

Amendment Barcode (if applicable)

Name Sarah Butters

Job Title

Address P.O. Box 391

Phone

Street

Tallahassee

FL

32302

Email sbutters@ausley.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1802

INTRODUCER: Senator Pizzo

SUBJECT: Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1802 provides that it is lawful for a person who is protected by an injunction for repeat violence, sexual violence, dating violence, domestic violence, or any other court-imposed prohibition of conduct toward the person, to intercept and record a wire, oral, or electronic communication received in violation of the injunction or order. Therefore, the bill creates an exception to the general prohibition against interceptions of wire, oral, or electronic communications without the consent of all parties.

Absent this exception, such recording is proscribed and is not admissible in evidence in a civil or criminal proceeding. The recording, authorized by the bill, may only be used for the purpose of proving violation of the injunction or order.

The bill is effective July 1, 2021.

II. Present Situation:

Definitions of Relevant Terms

Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

A protective injunction prohibiting repeat violence, sexual violence, or dating violence is authorized and governed by s. 784.046, F.S., which defines the following terms:

- “Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.
- “Sexual violence” means, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney, any one incident of:
 - Sexual battery, as defined in chapter 794;
 - A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787;
 - Sexual performance by a child, as described in chapter 827; or
 - Any other forcible felony wherein a sexual act is committed or attempted.
- “Dating violence” does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context. It means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship is determined based on the consideration of the following factors:
 - 1. A dating relationship must have existed within the past 6 months;
 - 2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
 - 3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

A protective injunction prohibiting domestic violence is authorized and governed by s. 741.30, F.S. The term “domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.¹

Interception of Oral Communications

Paragraphs (1)(a) and (4)(a) of s. 934.03, F.S., make it a third degree felony² to intentionally intercept an oral communication. The statute provides for a number of exceptions to this general prohibition.³ For example, it is lawful under ss. 934.03-934.09, F.S.,⁴ for:

- An investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept an oral communication if such person is

¹ Section 741.28(2), F.S.

² A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

³ Section 934.02(2)(a)-(k), F.S.

⁴ These laws respectively relate to: interception and disclosure of wire, oral, and electronic communications; manufacture of communication-intercepting devices; confiscation of those devices; authorization of an interception; authorization for disclosure and use of an intercepted communication; and the procedure for interception.

a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of such interception is to obtain evidence of a criminal act;⁵ and

- A person to intercept an oral communication when all of the parties to the communication have given prior consent to such interception.⁶

The contents of an intercepted communication and evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S. (i.e., creating a statutory exclusionary rule):

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.⁷

McDade v. State

In *McDade v. State*,⁸ the Florida Supreme Court (Court) held that it was an error to receive in evidence at McDade's criminal trial recordings that his stepdaughter surreptitiously made when she was 16 years-old. The recordings, which recorded conversations between McDade and his stepdaughter in McDade's bedroom, were introduced at McDade's trial for various crimes involving sexual abuse of his stepdaughter. The recorded conversations included statements by McDade that supported his stepdaughter's testimony at trial that McDade had sexually abused her. McDade had objected to their introduction.

The question before the Court was whether a recording of solicitation and confirmation of child sexual abuse surreptitiously made by the child victim in the accused's bedroom falls within the proscription of ch. 934, F.S. The Court determined that this was a question of statutory interpretation. The Court found that none of the exceptions in s. 934.03, F.S., to the general prohibition in that statute against interception of oral communications called "for the interception of conversations based on one's status as the victim of a crime."⁹ Further, the Court determined that the facts regarding the conversations and the recording of those conversations indicated the recordings were prohibited and inadmissible under ch. 934, F.S.:

[U]nder the definition of oral communication provided by section 934.02(2), Florida Statutes (2010), McDade's conversations with his stepdaughter in his bedroom are oral communications. The facts related to the recorded conversations support the conclusion that McDade's statements were "uttered by a person

⁵ Section 934.03(2)(c), F.S.

⁶ Section 934.03(2)(d), F.S.

⁷ Section 934.06, F.S.

⁸ 154 So.3d 292 (Fla. 2014).

⁹ *McDade* at 297.

exhibiting an expectation that [his] communication [was] not subject to interception” and that McDade made those statements “under circumstances justifying” his expectation that his statements would not be recorded. § 934.02(2), Fla. Stat. (2010). The recordings were made surreptitiously. McDade did not consent to the conversations being recorded, and none of the other exceptions listed in section 934.03(2) apply. The recordings, therefore, were prohibited. Because the recordings impermissibly intercepted oral communications, the recordings are inadmissible under section 934.06, Florida Statutes (2010).¹⁰

At the conclusion of its analysis, the Court stated:

It may well be that a compelling case can be made for an exception from chapter 934’s statutory exclusionary rule for recordings that provide evidence of criminal activity -or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature. It is not within the province of the courts to create such an exception by ignoring the plain import of the statutory text.¹¹

While the Legislature has addressed *McDade* directly by enactment of s. 934.03(2)(k), F.S., a similar concern exists with persons protected by an injunction or court order who would be able to record evidence of violations of those injunctions or orders but for the application of ss. 934.03, and 934.06, F.S.

III. Effect of Proposed Changes:

The bill creates a new exception in s. 934.03, F.S., to the general prohibition in that statute against interception of wire, oral, or electronic communications. The bill provides that it is lawful for a person who is protected under an active temporary or final injunction for repeat violence, sexual violence, or dating violence under s. 784.046; domestic violence under s. 741.30; or any other court-imposed prohibition of conduct toward the person to intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order.

¹⁰ *McDade* at 298. The Court obtained jurisdiction when it agreed to consider a question (which the Court rephrased) that had been certified by the Second District Court of Appeal (“Second District”) in *McDade v. State*, 114 So.2d 465 (Fla. 2d DCA 2013). In that case, the Second District rejected McDade’s argument that the trial court should have suppressed the recordings under the exclusionary rule in s. 934.06, F.S. The Second District determined that the statutory proscription on recording oral communications only applied “where the person uttering the communication has a reasonable expectation of privacy under the circumstances,” *McDade*, 114 So.2d at 470, and determined that McDade did not have a reasonable expectation of privacy. The Second District relied on a prior Florida Supreme Court case, *State v. Inciarrano*, 473 So.2d 1272 (Fla. 1985), which involved a victim recording. The Court rejected the Second District’s application of *Inciarrano*. It found the circumstances in *Inciarrano* were “starkly different” from the circumstances in the case presented. *McDade* at 298. Further, *Inciarrano* was “not based on a general rule that utterances associated with criminal activity are by virtue of that association necessarily uttered in circumstances that make unjustified any expectation that the utterances will not be intercepted” and could not “be used as a basis for the decision reached by the Second District, which turns on McDade’s status as a person engaged in crimes involving the sexual abuse of child.” *McDade* at 299.

¹¹ *McDade* at 299.

A recording authorized by this bill may only be provided to a law enforcement agency or a court for the purpose of evidencing a violation of an injunction or court order and may not be otherwise disseminated or shared.

As a result of this exception, any recording will not be proscribed and the exclusionary rule in s. 934.06, F.S., will not prohibit the recording from being received in evidence in a civil or criminal proceeding.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.03, Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Pizzo

38-01762-21

20211802__

1 A bill to be entitled
2 An act relating to interception of wire, oral, or
3 electronic communications made in violation of
4 protective orders; amending s. 934.03, F.S.; providing
5 an exception to prohibitions on interception and
6 recording of communications when the communication is
7 received in violation of a specified injunction or
8 order; limiting the use of the intercepted
9 communication to evidencing a violation of the
10 specified injunction or order; providing an effective
11 date.

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

14
15 Section 1. Paragraph (1) is added to subsection (2) of
16 section 934.03, Florida Statutes, to read:

17 934.03 Interception and disclosure of wire, oral, or
18 electronic communications prohibited.—

19 (2)

20 (1) It is lawful under this section and ss. 934.04-934.09
21 for a person who is protected under an active temporary or final
22 injunction for repeat violence, sexual violence, or dating
23 violence under s. 784.046; domestic violence under s. 741.30; or
24 any other court-imposed prohibition of conduct toward the person
25 to intercept and record a wire, oral, or electronic
26 communication received in violation of such injunction or court
27 order. A recording authorized under this paragraph may be
28 provided to a law enforcement agency or a court for the purpose
29 of evidencing a violation of an injunction or court order and

38-01762-21

20211802__

30 may not be otherwise disseminated or shared.

31 Section 2. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

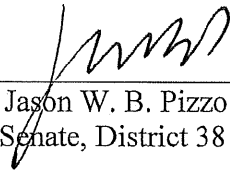
To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill #1802**, relating to Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

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 Judiciary

BILL: SB 1972

INTRODUCER: Senator Pizzo

SUBJECT: Expunction and Sealing of Judicial Records

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1972 provides for the sealing of certain records in civil cases and the expunction of criminal history records in criminal cases. The bill authorizes a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill also permits a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

The bill takes effect July 1, 2021.

II. Present Situation:

Domestic Violence Injunctions

Temporary Injunctions

If someone believes that she or he is a victim of domestic violence¹ or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that

¹ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in

person may petition a circuit court for an injunction for protection against domestic violence.² The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.³

Injunctions

Once notice is given, a hearing is held, and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim, the court may grant an injunction, no longer a temporary injunction. The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.⁴

Expunction of Criminal History Records

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.⁵ Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed⁶ or expunged for either a minor or an adult.⁷ However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.⁸

common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.” Section 741.28(3), F.S.

² Section 741.30(1)(a), F.S.

³ Section 741.30(5)(c), F.S.

⁴ Section 741.30(6)(c), F.S.

⁵ Sections 943.0585(4)(a), F.S. and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. See also Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).

⁶ In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws. Sections 943.045(19), F.S., 943.059(6), 119.07(1), F.S. and Art. I, s. 24(a), Fla. Const.

⁷ Sections 943.0585(4)(b) and 943.059(4)(b), F.S..

⁸ Section 943.0585(4)(b) and (e), F.S.

A person may have his or her criminal history record expunged under certain enumerated circumstances.⁹ When a record is expunged, the criminal justice agencies that possess the record must physically destroy or obliterate it. The Florida Department of Law Enforcement (FDLE) maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.¹⁰ The criminal history record retained by FDLE is confidential and exempt.¹¹ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.¹²

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if FDLE issues the person a certificate of eligibility for expunction.¹³ FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting the criteria set forth in statute.¹⁴ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains;
- The person has never secured a prior sealing or expunction, unless:
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.¹⁵

Other Types of Expunction

Other types of expunction include:

⁹ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

¹⁰ Section 943.045(16), F.S.

¹¹ Section 943.0585(6)(a), F.S.

¹² Section 943.0585(6), F.S.

¹³ Section 943.0585(4), F.S.

¹⁴ Section 943.0585(2), F.S.

¹⁵ Section 943.0585(1), F.S.

- Lawful self-defense expunction.¹⁶
- Human trafficking victim expunction.¹⁷
- Automatic Juvenile expunction.¹⁸
- Early juvenile expunction.¹⁹
- Administrative expunction due to a mistake.²⁰
- Juvenile diversion program expunction.²¹

III. Effect of Proposed Changes:

The bill authorizes a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

The bill requires FDLE to issue a certificate or deny the request for a certificate no later than 6 months after the application is submitted.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁶ Section 943.0578, F.S.

¹⁷ Section 943.0583, F.S.

¹⁸ Section 943.0515(1)(b)1., F.S.

¹⁹ Section 943.0515(1)(b)2., F.S.

²⁰ Section 943.0581, F.S.

²¹ Section 943.0582, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

FDLE states that there are currently 1,454,269 unique identification numbers with criminal records. If one percent of those individuals apply for a Certificate of Eligibility each year, applications would increase by 14,543 applications each year.

In order to accommodate the increased workload, the Seal/Expunge Section would need 18 FTE positions (one Criminal Justice Information Consultant II, 2 Criminal Justice Consultant Is, 8 Criminal Justice Information Analyst IIs, 2 Criminal Justice Information Analyst Is, 3 Criminal Justice Information Examiners, one Operations and Management Consultant Manager and one Senior Management Analyst Supervisor) for a total of \$1,207,115 of which \$1,137,005 recurring.

In order to maintain the proposed processing time of 6 months, the section would require five FTE positions (2 Criminal Justice Consultant Is, one Criminal Justice Information Analyst I and 2 Criminal Justice Information Examiners) totaling \$315,359 (\$295,884 recurring).

The required changes to Computerized Criminal History will cost an estimated \$724,000 in non-recurring funds. The increase in positions would also require the acquisition of additional office space to house the new employees, because the department's headquarters building is currently at capacity.

These amounts, according to FDLE, would equal \$2,249,474 of which \$1,432,889 is recurring.²²

It is likely that courts may also see an increase in requests for expunctions and an increase in workload to accommodate those requests.

VI. Technical Deficiencies:

None.

²² Florida Department of Law Enforcement, *SB 1972 Agency Bill Analysis Request* (March 11, 2021) <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=27871&yr=2021>.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 943.0585, Florida Statutes.

This bill creates s.741.301, Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Pizzo

38-00892A-21

20211972__

A bill to be entitled
An act relating to expunction and sealing of judicial records; creating s. 741.301, F.S.; providing for sealing of a petition for a domestic violence injunction and related documents if the petition was withdrawn or dismissed, or if there was a ruling in favor of the respondent; reenacting and amending s. 943.0585, F.S.; exempting expunctions sought for cases dismissed or nolle prosequi or that resulted in an acquittal from the limit on the number of expunctions that may be sought; expanding an exception to an eligibility requirement for expunction of a criminal history record to allow expunction for an offense committed when the person was a minor; providing an exception; requiring the Department of Law Enforcement to act on applications for certificates of eligibility within a specified timeframe; providing an effective date.

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

Section 1. Section 741.301, Florida Statutes, is created to read:

741.301 Sealing of domestic violence injunction petitions not granted.—A respondent to a petition made under s. 741.30 may petition the court to seal the petition for injunction and all records and documents related to it if the petition for injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. A petition for sealing under this

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section may be filed at any time.

Section 2. Subsections (1) and (2) of section 943.0585, Florida Statutes, are amended, and subsection (3) of that section is reenacted, to read:

943.0585 Court-ordered expunction of criminal history records.—

(1) ELIGIBILITY.—A person is eligible to petition a court to expunge a criminal history record if:

(a) An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.

(b) An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction or a judgment of acquittal was rendered by a judge, or a verdict of not guilty was rendered by a judge or jury. Paragraph (g) does not apply to an expunction sought under this paragraph.

(c) The person is not seeking to expunge a criminal history record that is ineligible for court-ordered expunction under s. 943.0584.

(d) The person has never, as of the date the application for a certificate of expunction is filed, been adjudicated guilty in this state of a criminal offense or been adjudicated delinquent in this state for committing any felony or any of the following misdemeanors, unless the record of such adjudication of delinquency has been expunged pursuant to s. 943.0515:

1. Assault, as defined in s. 784.011;

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- 59 2. Battery, as defined in s. 784.03;
- 60 3. Assault on a law enforcement officer, a firefighter, or
- 61 other specified officers, as defined in s. 784.07(2)(a);
- 62 4. Carrying a concealed weapon, as defined in s. 790.01(1);
- 63 5. Open carrying of a weapon, as defined in s. 790.053;
- 64 6. Unlawful possession or discharge of a weapon or firearm
- 65 at a school-sponsored event or on school property, as defined in
- 66 s. 790.115;
- 67 7. Unlawful use of destructive devices or bombs, as defined
- 68 in s. 790.1615(1);
- 69 8. Unlawful possession of a firearm, as defined in s.
- 70 790.22(5);
- 71 9. Exposure of sexual organs, as defined in s. 800.03;
- 72 10. Arson, as defined in s. 806.031(1);
- 73 11. Petit theft, as defined in s. 812.014(3);
- 74 12. Neglect of a child, as defined in s. 827.03(1)(e); or
- 75 13. Cruelty to animals, as defined in s. 828.12(1).
- 76 (e) The person has not been adjudicated guilty of, or
- 77 adjudicated delinquent for committing, any of the acts stemming
- 78 from the arrest or alleged criminal activity to which the
- 79 petition pertains.
- 80 (f) The person is no longer under court supervision
- 81 applicable to the disposition of arrest or alleged criminal
- 82 activity to which the petition to expunge pertains.
- 83 (g) Except for an expunction sought under paragraph (b),
- 84 the person has never secured a prior sealing or expunction of a
- 85 criminal history record under this section, s. 943.059, former
- 86 s. 893.14, former s. 901.33, or former s. 943.058, unless:
- 87 1. Expunction is sought of a criminal history record

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previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction; or

2. The prior expunction of a criminal history record was granted for an offense that was committed when the person was a minor and the record is otherwise eligible for expunction. This subparagraph does not apply if the prior expunction was for an offense in which the minor was charged as an adult.

(h) The person has previously obtained a court-ordered sealing of a ~~the~~ criminal history record under s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed before trial, without regard to whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years does not apply if a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed before trial or a judgment of acquittal was rendered by a judge or a verdict of not guilty was rendered by a judge or jury.

(2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court to expunge a criminal history record, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall issue a certificate or deny the request for a certificate no later than 6 months after the application is submitted. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for

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expunction.

(a) The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

1. Satisfies the eligibility criteria in paragraphs (1) (a) - (h) and is not ineligible under s. 943.0584.

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with the criteria in paragraph (1) (a) or paragraphs (1) (b) and (c).

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

4. Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

(b) A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

(3) PETITION.—Each petition to expunge a criminal history record must be accompanied by:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in

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subsection (1).

2. Is eligible for expunction to the best of his or her knowledge and does not have any other petition to seal or expunge a criminal history record pending before any court.

A person who knowingly provides false information on such sworn statement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

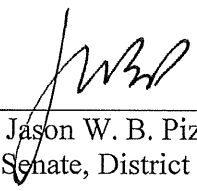
To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill #1972**, relating to Expunction and Sealing of Judicial Records, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21
Meeting Date

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

SB1972
Bill Number (if applicable)

Topic Expunction & Sealing JUD Records Amendment Barcode (if applicable)

Name David Sandan Citizen STATES

Job Title Retired (ABUSED HUSBAND) MAN

Address 66 WINTERGREEN DR Phone 352 805 6597
Street
FRUITLAND PARK FL 34731 Email GOLDENDAVE1955@gmail.com
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF & ABUSED DOMESTIC VIOLENCE HUSBANDS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

1972

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 301 N Gadsden St

Phone 850 488-6850

Street

Tallahassee FL

City

State

Zip

Email ndaniels@flda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT **AND DELIVER** THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

3/15/21

Meeting Date

SB1972

Bill Number (if applicable)

Topic Expunction and Sealing of Judicial Records

Amendment Barcode (if applicable)

Name Jorge Chanizo

Job Title Attorney

Address 108 S Monroe St.

Phone 850-681-0024

Street

Tallahassee

FL

323010

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

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.

2021 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1974

INTRODUCER: Senator Pizzo

SUBJECT: Public Records/Domestic Violence Injunction

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1974 creates a public records exemption for a petition, records, and documents relating to a petition for a domestic violence injunction when the petition was withdrawn, dismissed, or a ruling was issued in favor of the respondent and the court has ordered that those items be sealed upon the petition of the respondent.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless it is reviewed and saved from repeal through enactment by the Legislature.

The bill also contains a statement of public necessity as required by s. 24(c), Art. I of the State Constitution. According to the statement, allowing the sealing of those petitions, records, and documents would allow the requestors to continue their lives without facing barriers to employment and other life opportunities including possible discrimination and public criticism.

The bill takes effect on the same date that SB 1972, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Court Files, Records, and Exemptions

Pursuant to section 119.0714, F.S., nothing in the public records chapter may be construed to exempt a public record that was made a part of a court file *unless* the record has been specifically closed by court order, or falls into one of eleven enumerated categories. The final exemption, enacted in 2017, provides an exemption for a petition, and its contents for an injunction for protection against domestic violence which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself *without an injunction being issued*. The exemption applies to records relating to petitions dismissed on or after July 1, 2017.⁵

Court Rules

Article V, section 2 of the State Constitution grants rulemaking power to the Florida Supreme Court. Subject to that rulemaking power, the Court has adopted rules that “govern public access to and the protection of the records of the judicial branch of government.”⁶ Rule 2.420 of the Florida Rules of Judicial Administration states that the public shall have access to all records of the judicial branch except as provided in the rule. The “judicial branch” is defined to include the clerks of court when acting as an arm of the court. Another portion of the rule states that the clerk of the court will designate and maintain the confidentiality of information contained within a court record that is described in the rule.⁷

Rule 2.420(c)(7) of the Florida Rules of Judicial Administration states that “all records made confidential under . . . Florida and federal law” shall be confidential. The rule lists a series of records that will be maintained as confidential including, but not limited to, records relating to adoption, HIV test results and the identity of persons tested, birth records and portions of death and fetal death records, information that can be used to identify a minor who petitions for a waiver of parental or guardian notice of consent when seeking to terminate a pregnancy, and clinical records under the Baker Act.

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Chapter 2017-14, s. 3, Laws of Fla.

⁶ Fla. R. Jud. Admin. 2.420(a).

⁷ Fla. R. Jud. Admin. 2.420(d)(1).

However, the rule does not include the domestic violence injunction petition listed above. According to correspondence from the Florida Court Clerks and Comptrollers, in 2017, the Clerks requested guidance from the Florida Supreme Court to resolve their dilemma after the legislation was passed in 2017. Should the clerks release the confidential information that the Legislature intended to be confidential, or did they need to wait until the Court added the item to Rule 2.420 before keeping the items confidential?⁸

The Court ultimately decided that it would *not* amend the rule to include the domestic violence injunction materials.⁹ The Rules of Judicial Administration Committee stated that it did not believe that the statute was an appropriate subject for court rule. The Committee reasoned that the statute did not make the petition and its contents confidential upon filing, but rather upon dismissal for certain reasons and in certain circumstances. Because the clerks would not necessarily be able to glean why the petition was dismissed from the face of the order, there was no feasible way for the clerks to reliably determine in all cases when the provisions of the statute came into play. The Committee concluded and recommended that the burden of ensuring the confidentiality of the injunction petition should be upon the party or the party's attorney against whom the injunction was sought when the petition was dismissed for the reasons that would trigger the confidentiality protections in statute. They felt that the burden should not be upon the clerks by creating a new section in the Rules of Judicial Administration.¹⁰ This remains the current solution.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹¹ (the Act) prescribes a legislative review process for newly created or substantially amended¹² public records or open meetings exemptions, with specified exceptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

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.¹⁵ 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:

⁸ Correspondence from Marcia M. Johnson, President, Florida Court Clerks & Comptrollers, to the Honorable Jorge Labarga, Chief Justice of the Florida Supreme Court, (July 31, 2017) (on file with the Senate Committee on Judiciary).

⁹ Correspondence from John A. Tomasino, Clerk of the Supreme Court of Florida, to Marcia M. Johnson, President, Florida Court Clerks & Comptrollers (Jan. 10, 2018) (on file with the Senate Committee on Judiciary).

¹⁰ Correspondence from Judson Lee Cohen, Chair, Rules of Judicial Administration Committee to John A. Tomasino, Clerk of the Supreme Court of Florida (Nov. 21, 2017) (on file with the Senate Committee on Judiciary).

¹¹ Section 119.15, F.S.

¹² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹³ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;¹⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.¹⁸

The Act also requires specified questions to be considered during the review process.¹⁹ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁰ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²¹

Statement of Public Necessity

The State Constitution, in s. 24(c), Art. I, requires that each law establishing a public record exemption provide a statement of public necessity. The public necessity statement must specify the reason for the public necessity exemption and may be no broader than necessary to accomplish the stated purpose of the law. The law must pass each House of the Legislature by a two-thirds vote.

III. Effect of Proposed Changes:

The bill creates a public records exemption for a petition, records, and documents that have been ordered sealed by a court when a person, who was the respondent to a domestic violence injunction petition, requested the court to seal the items and the domestic violence injunction petition was withdrawn or dismissed or there was a ruling in favor of the respondent. The bill

¹⁶ Section 119.15(6)(b)1., F.S.

¹⁷ Section 119.15(6)(b)2., F.S.

¹⁸ Section 119.15(6)(b)3., F.S.

¹⁹ 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?

²⁰ See *generally* s. 119.15, F.S.

²¹ Section 119.15(7), F.S.

states that these items are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.

Statement of Public Necessity

The bill provides a public necessity statement supporting the creation of the public records exemption. The statement provides that it is a public necessity that petitions filed under ss. 741.30 and 741.301, F.S., and all records and documents related to the petitions be made confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Article I of the State Constitution unless the domestic violence injunction petition was withdrawn or dismissed or if a ruling was granted in favor of the respondent. If the petition was granted by the court, there can be no expunction.

The public necessity statement provides that people who have been accused of domestic violence face barriers to employment and other life opportunities, and the knowledge that they were accused of domestic violence, even though no injunction was granted, would expose them to possible discrimination and strong public criticism. Accordingly, it is necessary that these petitions and related documents be made confidential and exempt so that the petitioner for the sealing may have the chance to continue living without those consequences when an injunction was never issued. Making these petitions and related documents confidential and exempt will allow the requestors to have a chance to continue life without the negative consequences associated with a domestic violence injunction, particularly when the domestic violence injunction was never issued against them.

Open Government Sunset Review Act

The bill complies with the provisions of the Open Government Sunset Review Act. Section 741.301(2)(b), F.S. states that the new exemption language is subject to the Act and will stand repealed on October 2, 2026, unless reviewed and saved from repeal by reenactment by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. Because this bill creates an exemption for domestic violence injunction records when the injunction was never issued, the bill requires a two-thirds vote.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.301, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Pizzo

38-00893A-21

20211974__

A bill to be entitled
An act relating to public records; amending s.
741.301, F.S.; providing that all pleadings and
documents related to a petition domestic violence
injunction that have been ordered to be sealed are
confidential and exempt from public records
requirements; providing for future legislative review
and repeal of the exemption under the Open Government
Sunset Review Act; providing a statement of public
necessity; providing a contingent effective date.

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

Section 1. Section 741.301, Florida Statutes, as created by
SB ____, 2021 Regular Session, is amended to read:

741.301 Sealing of domestic violence injunction petitions
not granted.—

(1) A respondent to a petition made under s. 741.30 may
petition the court to seal the petition for injunction and all
records and documents related to it if the petition for
injunction was withdrawn or dismissed or if there was a ruling
in favor of the respondent. A petition for sealing under this
section may be filed at any time.

(2) (a) A petition, records, and documents that have been
ordered sealed under subsection (1) and the petition for sealing
are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
I of the State Constitution.

(b) This subsection is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand

38-00893A-21

20211974__

30 repealed on October 2, 2026, unless reviewed and saved from
31 repeal through reenactment by the Legislature.

32 Section 2. The Legislature finds that it is a public
33 necessity that petitions filed under ss. 741.30 and 741.301,
34 Florida Statutes, and all records and documents related to the
35 petitions be made confidential and exempt from s. 119.07(1),
36 Florida Statutes, and s. 24(a), Article I of the State
37 Constitution unless the domestic violence petition was granted.
38 Persons who have been accused of domestic violence face barriers
39 to employment and other life opportunities, and knowledge that
40 they were so accused, although no injunction was granted, would
41 expose them to possible discrimination and public obloquy. It is
42 necessary that these petitions and related documents be made
43 confidential and exempt in order for such petitioners to have
44 the chance to continue their lives without such consequences
45 when no injunction was ever issued.

46 Section 3. This act shall take effect on the same date that
47 SB ____ or similar legislation takes effect, if such legislation
48 is adopted in the same legislative session or an extension
49 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

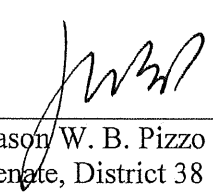
To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill #1974**, relating to Public Records/Domestic Violence Injunction, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21
Meeting Date

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

SR1974
Bill Number (if applicable)

Topic Public Record Domestic Violence
Amendment Barcode (if applicable)

Name DAVID SERDA
HUSBAND

Job Title Senator Domestic Abused
THAT ABUSED

Address 66 WINTERGREEN DR
352605659
Phone

Street Fruitland Park FL
Email gottendave1955@gmail.com

City State Zip 34731

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

Representing SELF & OTHER ABUSED HUSBAND

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.

A SHERIFF DEPT IN STATE
HAS TO PLEAD BOTH

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

3/15/21

Meeting Date

SB 1974

Bill Number (if applicable)

Topic Public Records/Domestic Violence Injunction

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

Phone 850-681-0024

Street

Tallahassee

FL

32312

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 368

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Elder-focused Dispute Resolution Process

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 368 creates an alternative dispute resolution process for persons 60 years of age and older who are involved in certain legal proceedings, such as guardianships. Specifically, the bill allows a court to appoint an eldercaring coordinator to assist in disputes that can impact an elder's safety and autonomy.

An eldercaring coordinator may be appointed for up to 2 years, although a court has discretion to extend or suspend the appointment as needed. In order to be appointed as an eldercaring coordinator, an applicant must:

- Meet a professional licensing requirement, such as membership in The Florida Bar or being a licensed nurse;
- Complete 3 years of post-licensing or certification practice;
- Receive training in family and elder mediation;
- Receive 28 hours in eldercare coordinator training, which will include topics such as elder, guardianship, and incapacity law; family dynamics, multicultural competency, and elder abuse, neglect, and exploitation;
- Successfully pass a background check; and
- Have not been a respondent in a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person.

The bill provides that an eldercaring coordinator may be removed or disqualified if the coordinator no longer meets the minimum qualifications or upon court order.

The bill prohibits a court from ordering parties to eldercaring coordination without first confirming the financial ability of the parties to pay relevant fees and costs. Further, the court is required to determine the allocation among the parties of fees and costs for eldercaring coordination and may make an unequal allocation based on the financial circumstances of each party after considering certain factors. If a court finds that a party is indigent, the bill prohibits the court from ordering the party to eldercaring coordination unless funds are available to pay the indigent party's allocated portion. Likewise, cases involving exploitation of an elder or domestic violence are ineligible for a referral without the consent of the parties involved.

The bill provides that all communications that meet specified requirements and are made during eldercaring coordination must be kept confidential. The bill provides that parties to the eldercaring coordination, including the coordinator, may not testify unless one of the enumerated exceptions applies.

The bill provides legislative findings and requires the Florida Supreme Court to establish minimum standards and procedures for training, qualifications, discipline, and education of eldercaring coordinators. The bill also defines a number of terms, including:

- “Action”;
- “Elder”;
- “Eldercaring coordination”;
- “Eldercaring coordination communication”;
- “Eldercaring coordinator”;
- “Eldercaring plan”;
- “Good cause”;
- “Legally authorized decisionmaker”;
- “Participant”; and
- “Party.”

The Office of State Courts Administrator states that the bill will have an indeterminate fiscal impact on the state court system and no impact on the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Elder Population

As the country's “baby-boomer” population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016¹ to 77

¹ Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing*, *Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, available at <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited January 28, 2021).

million by 2034.² Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.³ In 2018, individuals aged 65 and older represented approximately 20 percent of Florida's total population.⁴ By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and it is estimated that individuals age 65 and older will account for approximately 47.9 percent of the state's population growth between 2010 and 2030.⁵

Mediation

Mediation is a process in which a neutral third person acts to facilitate the resolution of a lawsuit or other dispute between two or more parties.⁶ Various statutes currently authorize courts to use mediation to aid in resolving cases, but the statutes also provide that many of the procedural aspects of mediation are to be governed by the Florida Rules of Civil Procedure.⁷ Depending on the type of case, there are different circumstances under which a court would refer the matter to mediation. In a lawsuit for money damages, the court must refer the matter to mediation upon the request of a party if the party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties.⁸ However, a court need not refer such a case to mediation if it involves:

- Medical malpractice or debt collection;
- A landlord-tenant dispute not involving personal injury;
- Disputes covered under the Small Claims Act; or
- One of the few other circumstances set forth in statute.⁹

Beyond these cases that a court *must* refer to mediation, the court *may*, in general, refer all or part of any other filed civil action to mediation.¹⁰

² Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised Oct. 8, 2019), available at <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited January 28, 2021).

³ Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited January 28, 2021).

⁴ U.S. Census Bureau, *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States*, available at <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited January 28, 2021).

⁵ The Office of Economic & Demographic Research (EDR), *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, p. 89-90 and 269-70, available at http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf (last visited January 28, 2021); The EDR, *Econographic News: Economic and Demographic News for Decision Makers*, 2019, Vol. 1, available at: <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited January 28, 2021).

⁶ Section 44.1011(2), F.S.; See also Fla. Jur. 2d, Arbitration and Award §113.

⁷ Section 44.102(1), F.S.

⁸ Section 44.102(2)(a), F.S.

⁹ *Id.*

¹⁰ Section 44.102(2)(b)-(d), F.S. Additionally, a court is required or authorized to refer certain family law and dependency matters to litigation, as specified in s. 44.102(2)(c) and (d), F.S.

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member^{11, 12} by another family or household member, including, but not limited to:

- Assault;¹³
- Aggravated assault;¹⁴
- Battery;¹⁵
- Aggravated battery;¹⁶
- Sexual assault;¹⁷
- Sexual battery;¹⁸
- Stalking;¹⁹
- Aggravated stalking;²⁰
- Kidnapping;²¹ or
- False imprisonment.²²

¹¹ Section 741.28(2), F.S.

¹² Section 741.28(3), F.S., defines “family or household member” to mean spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

¹³ Section 784.011, F.S., defines “assault” to mean an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent.

¹⁴ Section 784.021, F.S., defines “aggravated assault” means an assault with a deadly weapon without intent to kill or with intent to commit a felony.

¹⁵ Section 784.03, F.S., defines “battery” to mean the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another.

¹⁶ Section 784.045, F.S., defines “aggravated battery” to mean a battery in which the offender: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or victimizes a person the offender knew or should have known was pregnant.

¹⁷ Although not specifically defined under Florida law, “sexual assault” generally has the same meaning as sexual battery. See University of South Florida, *USF Health in South Tampa Annual Security Report 2020*, p. 3-1, available at <https://health.usf.edu/-/media/3573942FF8E04B5F8B3FB4BF956BBC31.ashx>.

¹⁸ Section 794.011(1)(h), F.S., defines “sexual battery” to mean oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose.

¹⁹ Section 784.048(2), F.S., defines “stalking” to mean willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. Section 784.048(1)(d), F.S., defines “cyberstalk” to mean to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

²⁰ Section 784.048(3), F.S., defines “aggravated stalking” to mean willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person.

²¹ Section 787.01(1), F.S., defines “kidnapping” to mean forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function.

²² Section 787.02(1), F.S., defines “false imprisonment” to mean forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

In 2018, Florida law enforcement agencies received 104,914 domestic violence reports,²³ resulting in 64,573 arrests.²⁴ Additionally, Florida's 41 certified domestic violence shelters²⁵ admitted new 14,817 victims to a residential services program and 38,869 new victims to a non-residential services program in Fiscal Year 2018-19.²⁶

Exploitation of Vulnerable Adults

The “Adult Protective Services Act” (ch. 415, F.S.) defines abuse as “any willful act or threatened act by a relative, caregiver, or household member, which causes or is likely to cause significant impairment to a vulnerable adult’s²⁷ physical, mental, or emotional health.”²⁸ The Adult Protective Services program, located within the Department of Children and Families (DCF), is responsible for investigating allegations of abuse, neglect²⁹, or exploitation³⁰, as provided in the Adult Protective Services Act.³¹

Section 415.1034, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately.

Once a person reports to the central abuse hotline, the DCF must initiate a protective investigation within 24 hours.³² If a caregiver refuses to allow the DCF to begin a protective investigation or interferes with the investigation, the DCF may contact the appropriate law enforcement agency for assistance.³³

²³ Florida Department of Law Enforcement, *Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2018*, p. 22, available at http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR18.aspx (last visited February 2, 2021).

²⁴ Florida Department of Law Enforcement, *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2018*, p. 21, available at http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_ARR_JUR18.aspx (last visited February 2, 2021).

²⁵ The Department of Children and Families (“The DCF”) operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards. See The DCF, *Domestic Violence Program Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml>

²⁶ The DCF, *Domestic Violence Annual Report*, p. 2, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2018-2019%20DV%20Service%20Report.pdf> (last visited February 2, 2021).

²⁷ The DCF, *Domestic Violence Annual Report*, p. 2, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2018-2019%20DV%20Service%20Report.pdf> (last visited February 2, 2021).

²⁸ Section 415.102(28), F.S., defines “vulnerable adult” to mean a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

²⁹ Section 415.102(1), F.S.

³⁰ See s. 415.102(16), F.S.

³¹ See s. 415.102(8), F.S., for the definition of “exploitation”.

³² See ss. 415.101-415.113, F.S.

³³ Section 415.104, F.S.

³⁴ *Id.*

Chapter 825, F.S., also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.³⁴ Section 825.103, F.S., provides that a person commits the offense of “exploitation of an elderly person³⁵ or disabled adult”³⁶ when he or she:

- Stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;
- Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
- Breaches a fiduciary duty to the elderly person or disabled adult while acting as the person’s guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;
- Misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer; or
- Intentionally or negligently fails to effectively use an elderly person’s or disabled adult’s income and assets for the necessities required for that person’s support and maintenance while acting as a caregiver or standing in a position of trust and confidence with the elderly person or disabled adult.

An elderly person or disabled adult “lacks capacity to consent” when suffering from impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing the elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.³⁷

Parenting Coordination

In 2009, the Florida Legislature established a statutory framework for a form of child-focused mediation known as parenting coordination.³⁸ Parenting coordinators are appointed by the court to assist parents in developing, implementing, or resolving disputes in a parenting plan. The

³⁴ See ss. 825.101-106, F.S.

³⁵ Section 825.101(4), F.S., defines “elderly person” to mean a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.

³⁶ Section 825.101(3), F.S., defines “disabled adult” to mean a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

³⁷ Section 825.101(8), F.S.

³⁸ Chapter 2009-180, s. 2, L.O.F. (creating s. 61.125, F.S., effective October 1, 2009).

parenting coordinators help parents to resolve disputes by providing education, making recommendations, and making limited decisions within the scope of the court's order of referral.³⁹ To be a qualified parenting coordinator, a person must complete various training requirements and must be a:

- Licensed mental health professional;
- Licensed physician with certification by the American Board of Psychiatry and Neurology;
- Certified family law mediator with a master's degree related to mental health; or
- Member of The Florida Bar.⁴⁰

Additionally, a parenting coordinator must complete all of the following:

- Three years of post-licensure or post-certification practice.
- A family mediation training program certified by the Florida Supreme Court.
- A minimum of 24 hours of parenting coordination training.⁴¹
- A minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination.⁴²

Eldercaring Coordination

As parenting coordination became recognized as a viable method of dispute resolution in contentious child custody and visitation matters, courts and legal professionals used the concept as a model to develop a similar option for disputes involving elders.⁴³

Eldercaring coordination emphasizes improving relationships between elders, family members, and others in supportive roles so that all parties are able to collaborate successfully with professionals in making difficult decisions and adapting to changing circumstances.⁴⁴ The Association for Conflict Resolution defines eldercaring coordination as, “a dispute resolution process during which an eldercaring coordinators assists elders, legally authorized decision-makers, and others who participate by court order or invitation, to resolve disputes with high conflict levels in a manner that respects the elder's need for autonomy and safety.”⁴⁵

Eldercaring coordination is used to complement other services, such as obtaining legal information or representation; individual or family therapy; and medical, psychological, or psychiatric evaluation or mediation.⁴⁶ Eldercaring coordination may also prove efficient in:

- Resolving non-legal issues outside of court;

³⁹ Section 61.125(2) and (3), F.S.

⁴⁰ Section 61.152(5)(a)1., F.S.

⁴¹ The topics include parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure. Section 61.125(5)(a)2.c., F.S.

⁴² Section 61.125(5)(a)2., F.S.

⁴³ The Association for Conflict Resolution, *Guidelines for Eldercare Coordination*, p. 2, (October 2014), available at <https://ncpj.files.wordpress.com/2017/05/m4-fieldstone-morley-acr-guidelines-for-eldercaring-coordination.pdf> (last visited January 28, 2021) (hereinafter “ACR Guidelines”).

⁴⁴ Sue Bronson & Linda Fieldstone, *From Friction to Fireworks to Focus: Eldercaring Coordination Sheds Light in High-Conflict Cases*, 24 Experience 29, p. 2, American Bar Association, Fall/Winter 2015 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁵ ACR Guidelines, p. 15

⁴⁶ *Id.*

- Fostering a need for self-determination among both elders and family members;
- Monitoring high-risk situations for signs of elder abuse, neglect, or exploitation;
- Offering an additional source of support during times of transition.⁴⁷

Currently, fourteen jurisdictions in five states have eldercare coordination pilot programs.⁴⁸

Eldercaring Coordination in Florida

While parenting coordination is used throughout Florida in many cases involving issues related to children, there is no statewide alternative dispute resolution in place to address cases involving the elderly.⁴⁹ In March 2013, the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) created a task force known as the Task Force on Eldercaring Coordination (FLAFCC Task Force), which sought to develop a dispute resolution model for contentious cases involving elders, their family members, and other participants.⁵⁰

The FLAFCC Task Force worked collaboratively with the Association for Conflict Resolution's Task Force on Eldercaring Coordination (ACR Task Force), which provided general, non-state specific guidance and suggestions on the practice of eldercaring coordination.⁵¹ The ACR Guidelines for Eldercaring Coordinators were developed, and on November 6, 2014, these guidelines were adopted by the Association of Family and Conciliation Courts.⁵² Subsequently, on November 10, 2014, the FLAFCC Board of Directors approved their own, Florida-specific guidelines, which are utilized by eldercare coordinators in Florida.⁵³

In 2015, eight of Florida's twenty judicial circuits were chosen to participate in a pilot program intended to provide eldercare coordination services: the Fifth, Seventh, Ninth, Twelfth, Thirteenth, Fifteenth, Seventeenth, and Eighteenth Circuits.⁵⁴ Court administrators representing the First, Sixth, Eighth, and Eleventh circuits have since expressed interest in becoming a part of the pilot.⁵⁵ Pilot programs were also created in four other states: Idaho, Indiana, Ohio, and Minnesota.⁵⁶ The pilot programs⁵⁷ function by having eldercaring coordinators assigned to elder

⁴⁷ *Id.*

⁴⁸ Karen Campbell, *Dispute Resolution Tactics Emerge to Aid the Elderly*, 27 Experience 2, 13, American Bar Association, July 2017. (On file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁹ Florida Chapter of the Association of Family and Conciliation Courts Task Force on Eldercaring Coordination, *Guidelines for Eldercaring Coordinators*, p. 3 (October 2014), available at https://flafcc.org/wp-content/uploads/2020/08/flafcc_guidelines_for_eldercaring_coordination_website.pdf (last visited January 28, 2021).

⁵⁰ *Id.*

⁵¹ *Id.* at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Jim Ash, 'Eldercaring' Program Serves the Courts and Florida's Aging Citizens, The Florida Bar News, October 15, 2018, available at <https://www.floridabar.org/the-florida-bar-news/eldercaring-program-serves-the-courts-and-floridas-aging-citizens/> (last visited January 28, 2021) (hereinafter cited as "Florida Bar News").

⁵⁵ *Id.*; see also The Office of the State Courts Administrator (OSCA), *Judicial Branch 2021 Legislative Agenda*, p. 18-19, (2021) (On file with the Senate Committee on Children, Families, and Elder Affairs.).

⁵⁶ *Id.*; see also OSCA *Judicial Branch 2021 Legislative Agenda*, p. 18-19 (2021) (On file with the Senate Committee on Children, Families, and Elder Affairs)(hereinafter cited as "Judicial Branch 2021 Legislative Agenda").

⁵⁷ "Pilot site" is defined as: "One judge or group of judges or magistrates that refer at least six cases for eldercaring coordination, or a group of attorneys that initiate at least six cases for eldercaring coordination through agreed order, where

law cases involving typical indicators of family discord.⁵⁸ A total of approximately 75 cases have been referred to the eight Florida sites since their inception.⁵⁹

According to the FLAFCC Elder Justice Initiative on Eldercaring Coordination (Initiative), judges from the Probate and Guardianship Divisions of courts from each pilot site first evaluated and selected individuals to be trained as eldercaring coordinators.⁶⁰ Judges, eldercaring coordinators, and administrators were then trained on eldercaring coordination.⁶¹ Cases were referred and the FLAFCC has since reported the following findings from cases at the pilot sites:

- Fewer motions;
- Shorter, more efficient hearings;
- Reduced levels of family conflict, leading to minimized abuse, neglect, and exploitation of elders;
- A reduced need for guardianships and a reduced number of cases in need of final determinations of capacity; and
- An increased ability of elders and family members to respond to issues efficiently and without needing further judicial intervention.⁶²

III. Effect of Proposed Changes:

The bill creates s. 44.407, F.S., allowing eldercaring coordination as an alternative dispute resolution process for elders, their family members, and their legally authorized decision makers engaged in disputes involving an elder's wants, needs, and best interests.

Definitions

The bill provides a number of definitions, including:

- “Action,” which is defined as a proceeding in which a party sought or seeks a judgment or an order from the court to:
 - Determine if someone is or is not incapacitated pursuant to s. 744.331, F.S.
 - Appoint or remove a guardian.
 - Undertake an investigation pursuant to s. 415.104, F.S.
 - Audit an annual guardianship report.
 - Review a proxy's decision pursuant to s. 765.105, F.S.
 - Appoint a guardian advocate pursuant to s. 393.12, F.S.
 - Enter an injunction for the protection of an elder under s. 825.1035, F.S.
 - Follow up on a complaint made to the Office of Public and Professional Guardians pursuant to s. 744.2004, F.S.
 - Address advice received by the court from the clerk of the court pursuant to s. 744.368(5), F.S.

those families choose to participate in the independent research of the process.” Judicial Branch 2021 Legislative Agenda, p. 19.

⁵⁸ The Florida Bar News.

⁵⁹ *Id.*

⁶⁰ Judicial Branch 2021 Legislative Agenda, p. 19.

⁶¹ *Id.*

⁶² Judicial Branch 2021 Legislative Agenda, p. 19-20.

- At the discretion of the presiding judge, address other matters pending before the court which involve the care or safety of an elder or the security of an elder's property.
- "Elder," which is defined as a person 60 years of age or older who is alleged to be suffering from the infirmities of aging as manifested by a physical, a mental, or an emotional dysfunction to the extent that the elder's ability to provide adequately for the protection or care of his or her own person or property is impaired.
- "Eldercaring coordination," which is defined as an elder-focused dispute resolution process during which an eldercaring coordinator assists an elder, legally authorized decisionmakers, and others who participate by court order or by invitation of the eldercaring coordinator, in resolving disputes regarding the care and safety of an elder by:
 - Facilitating more effective communication and negotiation and the development of problem-solving skills.
 - Providing education about eldercare resources.
 - Facilitating the creation, modification, or implementation of an eldercaring plan and reassessing it as necessary to reach a resolution of ongoing disputes concerning the care and safety of the elder.
 - Making recommendations for the resolution of disputes concerning the care and safety of the elder.
 - With the prior approval of the parties to an action or of the court, making limited decisions within the scope of the court's order of referral.
- "Eldercaring coordination communication," which is defined to mean an oral or a written statement or nonverbal conduct intended to make an assertion by or to an eldercaring coordinator or individuals involved in eldercaring coordination made during an eldercaring coordination activity, or before the activity if made in furtherance of eldercaring coordination.⁶³
- "Eldercaring coordinator," which is defined to mean an impartial third person who is appointed by the court or designated by the parties and who meets the requirements of of the bill.⁶⁴
- "Eldercaring plan" to mean a continually reassessed plan for the items, tasks, or responsibilities needed to provide for the care and safety of an elder which is modified throughout eldercaring coordination to meet the changing needs of the elder and which takes into consideration the preferences and wishes of the elder. The plan is not a legally enforceable document, but is meant for use by the parties and participants.
- "Good cause" to mean a finding that the eldercaring coordinator:
 - Is not fulfilling the duties and obligations of the position;
 - Has failed to comply with any order of the court, unless the order has been superseded on appeal;
 - Has conflicting or adverse interests that affect his or her impartiality;
 - Has engaged in circumstances that compromise the integrity of eldercaring coordination;
 - or

⁶³ The definition goes on to state that the term does not include statements made during eldercaring coordination which involve the commission of a crime, the intent to commit a crime, or ongoing abuse, exploitation, or neglect of a child or vulnerable adult.

⁶⁴ The definition further states that the role of the eldercaring coordinator is to assist parties through eldercaring coordination in a manner that respects the elder's need for autonomy and safety.

- Has had a disqualifying event occur.⁶⁵
- “Legally authorized decisionmaker,” which is defined to mean an individual designated, either by the elder or by the court, pursuant to ch. 709, F.S. (relating to powers of attorney), ch. 744, F.S. (relating to guardianships), ch. 747, F.S. (relating to conservatorships), or ch. 765, F.S. (relating to health care advance directives) who has the authority to make specific decisions on behalf of the elder who is the subject of an action.
- “Participant,” which is defined to mean an individual who joins eldercaring coordination by invitation of or with the consent of the eldercaring coordinator but who has not filed a pleading in the action from which the case was referred to eldercaring coordination.
- “Party,” which is defined to include the elder who is the subject of an action and any other individual over whom the court has jurisdiction.

Referral Process

The bill allows a court to appoint an eldercaring coordinator and refer the parties to eldercaring coordination upon agreement of the parties, the court’s own motion, or the motion of any party. The bill prohibits the court from referring parties with a history of domestic violence or exploitation of an elder to eldercaring coordination absent the consent of all parties, including the elder. Further, the court must offer each party a chance to consult with either an attorney or a domestic violence advocate prior to accepting consent of the referral and the court is required to determine whether or not each of the parties has given their consent freely and voluntarily.

When a court is determining whether to refer parties who may have an above-mentioned history that would otherwise preclude the referral, the court must consider:

- Whether a party has committed a violation of an act of exploitation as defined in s. 415.102(8), F.S., or s. 825.103(1), F.S., or domestic violence as defined in s. 741.28, F.S. against another party or any member of another party’s family;
- Engaged in a behavioral pattern where power and control are used against another party and that could jeopardize another party’s ability to negotiate fairly; or
- Behaved in a way that leads another party to reasonably believe that they are in imminent danger of becoming a victim of domestic violence.

The bill also requires the court to consider all relevant factors, including, but not limited to, those listed in s. 741.30(6)(b), F.S.

The court is required to order necessary precautions to protect the safety of all parties to the proceeding, all participants, the elder and their property if it refers a case that involves a party who has any history of domestic violence or exploitation of an elder. These precautions may include adherence to all provisions of an injunction for protection or conditions of bail, probation, a criminal sentence, and other relevant precautions.

⁶⁵ The bill provides that the term does not include a party’s disagreement with the eldercaring coordinator’s methods or procedures.

Appointment and Qualifications of the Eldercaring Coordinator

The bill provides that the court's appointment of an eldercaring coordinator is for a term of up to 2 years. The court must conduct review hearings intermittently to determine whether it is appropriate to conclude or extend the term of the appointment. The bill prescribes the qualifications of eldercaring coordinators and also identifies factors that disqualify individuals from serving as eldercaring coordinators. Specifically, the bill requires eldercaring coordinators to be in good standing or in clear and active status with all professional licensing authorities or certification boards and to meet at least one of the following requirements related to professional training:

- Be a licensed mental health professional under ch. 491, F.S., and hold a master's degree (or a higher degree) in their field;
- Be a licensed psychologist under ch. 490, F.S.;
- Be a licensed physician under ch. 458 or 459, F.S.;
- Be a licensed nurse under ch. 464, F.S., and hold a master's degree or a higher degree;
- Hold a family mediator certification from the Florida Supreme Court and a master's degree or a higher degree;
- Be a member in good standing of The Florida Bar; or
- Serve as a professional guardian as defined in s. 744.102(17), F.S., and hold a master's degree or a higher degree.

The bill also requires eldercaring coordinators to complete all of the following:

- Three years of post-licensure or post-certification practice;
- A Florida Supreme Court-certified family mediation training program;
- An elder mediation training program which adheres to the standards of the Florida Supreme Court; however, if the Florida Supreme Court has not yet adopted such standards, then the eldercaring coordinator must complete a program which adhered to the standards for elder mediation training adopted by the Association for Conflict Resolution; and
- Eldercaring coordinator training, which totals 28 or more hours and includes:
 - Eldercaring coordination;
 - Elder, guardianship, and incapacity law and procedures and less restrictive alternatives to guardianship relating to eldercaring coordination;
 - A minimum of four hours on the implications of elder abuse, neglect, and exploitation along with other safety issues relevant to eldercaring coordination;
 - The role of the elder in eldercaring coordination;
 - Family dynamics pertaining to eldercaring coordination;
 - Eldercaring coordination skills and techniques;
 - Multicultural competence and its use in eldercaring coordination;
 - A minimum of two hours of ethical considerations related to eldercaring coordination;
 - The use of technology in eldercaring coordination; and
 - Court-specific eldercaring coordination procedures.

Further, qualified eldercaring coordinators must:

- Pass a Level 2 background screening pursuant to s. 435.04(2) and (3), F.S., or be exempt from disqualification under s. 435.07, F.S.;

- Have not had a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person filed against them;
- Meet any additional qualifications required by the court to address party-specific issues.

If an eldercaring coordinator no longer meets the minimum qualifications to serve as such or one of the disqualifying circumstances occurs, the bill provides that an eldercaring coordinator must resign and promptly notify the court. Further, the bill requires the court to remove an eldercaring coordinator upon their resignation or disqualification, or upon a finding of good cause.

Upon a motion of the court or any party, the court is permitted to suspend the authority of an eldercaring coordinator pending a hearing on the motion for removal. Notice of such a hearing must be timely served on the eldercaring coordinator and all other parties to the action.

If it is shown that a motion was made in bad faith, the court has discretion to award reasonable attorney fees and costs to a party or an eldercaring coordinator who prevails on a motion for removal, in addition to any other legal remedy.

The bill provides that whenever an eldercaring coordinator resigns, is removed, or is suspended from an appointment, the court must then appoint a successor qualified eldercaring coordinator agreed to by all parties to the action, or another qualified eldercaring coordinator to serve for the remainder of the original term if the parties are unable to come to an agreement on a successor.

Fees and Costs for Eldercaring Coordination

The court is prohibited from ordering the parties to eldercaring coordination without the parties' consent unless the court determines that the parties have the financial ability to pay the eldercaring coordination fees and costs. The bill provides that the court must determine the allocation of fees and costs of eldercaring coordination between the parties and that a party who is asserting that he or she is unable to pay the eldercaring coordination fees and costs must complete an approved financial affidavit form. The court is required to consider specified factors for determining whether a non-indigent party has the ability to pay, including:

- Income;
- Assets and liabilities;
- Financial obligations; and
- Resources, including, but not limited to, whether the party can receive or is receiving trust benefits, whether the party is represented by and paying a lawyer, and whether paying the fees and costs of eldercaring coordination would create a substantial hardship.

If a party is found to be indigent pursuant to s. 57.082, F.S., which provides for the appointment of an attorney in certain civil cases, the court may not order eldercaring coordination unless public funds are available to pay the indigent party's portion or a non-indigent party agrees to pay all of the fees and costs.

Confidentiality of Eldercaring Coordination Communications

The bill protects the confidentiality of all communications by, between, or among the parties and the eldercaring coordinator during eldercaring coordination, and precludes the eldercaring coordinator from testifying or offering evidence, except in specified circumstances, as follows:

- The relevant communications are needed to identify, authenticate, confirm, or deny a written and signed agreement which the parties entered into during the course of eldercaring coordination.
- The relevant communications are needed in order to identify an issue to be resolved by the court without disclosing any other communications made by any party or the eldercaring coordinator.
- The relevant communications are limited to the subject of a party's compliance with the order of referral to eldercaring coordination, orders for psychological evaluation, court orders or health care provider recommendations for counseling, or court orders for substance abuse testing or treatment.
- The relevant communications are needed in order to determine whether the eldercaring coordinator is sufficiently qualified or to determine the immunity and liability of an eldercaring coordinator shown to have acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.
- The parties mutually agree that the communications can be disclosed.
- The relevant communications are needed in order to protect a person from future acts which would constitute domestic violence under ch. 741, F.S.; child abuse, neglect, or abandonment under ch. 39, F.S.; or abuse, neglect, or exploitation of an elderly or disabled adult under ch. 415, F.S., or ch. 825, F.S., or are required in an investigation conducted pursuant to s. 744.2004, F.S., or a review pursuant to s. 744.368(5), F.S.
- The relevant communications are offered to report, prove, or disprove professional misconduct alleged to have occurred during eldercaring coordination, solely for the internal use of the body conducting the investigation of such misconduct.
- The relevant communications are offered to report, prove, or disprove professional malpractice alleged to have occurred during eldercaring coordination, solely for the professional malpractice proceeding.
- The relevant communications were deliberately used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.

The bill requires an eldercaring coordinator to inform the court of any emergency situation, and defines an emergency situation as follows:

- An eldercaring coordinator has made, or intends to make, a report pursuant to ch. 39, F.S., or ch. 415, F.S., related to child abuse or elder abuse; or
- Any party, or a person acting on their behalf, is threatening to, or is believed to be planning to, kidnap an elder as defined in s. 787.01, F.S., or wrongfully removes or is removing the elder from the jurisdiction of the court absent court approval or compliance with the relevant requirements of s. 744.1098, F.S.⁶⁶

⁶⁶ The bill further provides that where an eldercaring coordinator believes that a party or family member has relocated an elder within the state in order to safeguard the elder from domestic violence, the eldercaring coordinator is not permitted to disclose the location of the elder unless required to do so by the court.

The bill also limits the civil liability of an eldercaring coordinator who acts in good faith, and requires the Florida Supreme Court to establish minimum standards and procedures for the training, ethical conduct, and discipline of eldercaring coordinators. The bill allows the Court to employ or appoint personnel as necessary to assist in carrying out these functions.

The bill also provides a number of legislative findings.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 368 may reduce litigation costs to participants in eldercaring coordination.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill will lead to a decreased workload for courts because cases that use eldercaring coordination generally have fewer motions filed, shorter hearings, and very few require emergency hearings.⁶⁷

⁶⁷ The OSCA, *Senate Bill 368 Judicial Impact Statement*, p. 2 (February 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The fiscal impact to the state is indeterminate because there is currently insufficient data to reliably calculate the effect of the bill on judicial workload.⁶⁸ However, some level of costs are anticipated in order to implement eldercaring coordination throughout the state.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 44.407, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on Mar 15, 2021.

The Committee Substitute differs from the underlying bill by:

- Adding physicians licensed under chapter 459 (Osteopathic medicine) to the list of qualified individuals who may serve as an elder caring coordinator.
- Specifying how fingerprints are to be processed for the level 2 background screening conducted for a person appointed to serve as an eldercaring coordinator.

- B. Amendments:

None.

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

⁶⁸ The OSCA, *Senate Bill 368 Judicial Impact Statement*, p. 3 (February 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶⁹ *Id.*

By Senator Baxley

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A bill to be entitled

An act relating to an elder-focused dispute resolution process; creating s. 44.407, F.S.; providing legislative findings; defining terms; authorizing the courts to appoint an eldercaring coordinator and refer certain parties and elders to eldercaring coordination; prohibiting the courts from referring certain parties to eldercaring coordination without the consent of the elder and other parties to the action; specifying the duration of eldercaring coordinator appointments; requiring the courts to conduct intermittent review hearings regarding the conclusion or extension of such appointments; providing qualifications and disqualifications for eldercaring coordinators; providing for the removal and suspension of authority of certain eldercaring coordinators; requiring that notice of hearing on removal of a coordinator be timely served; authorizing the courts to award certain fees and costs under certain circumstances; requiring the court to appoint successor eldercaring coordinators under certain circumstances; authorizing the courts to make certain determinations based on the fees and costs of eldercaring coordination; providing that certain communications between the parties and eldercaring coordinators are confidential; providing exceptions to confidentiality; providing requirements for emergency reporting to courts under certain circumstances; providing immunity from liability for certain parties

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under specified circumstances; requiring the Florida Supreme Court to establish certain minimum standards and procedures for eldercaring coordinators; providing an effective date.

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

Section 1. Section 44.407, Florida Statutes, is created to read:

44.407 Elder-focused dispute resolution process.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Denying an elder a voice in decisions regarding himself or herself may negatively affect the elder's health and well-being, as well as deprive the elder of his or her legal rights. Even if an elder is losing capacity to make major decisions for himself or herself, the elder is still entitled to the dignity of having his or her voice heard.

(b) As an alternative to proceedings in court, it is in the best interest of an elder, their family members, and legally recognized decisionmakers to have access to a nonadversarial process to resolve disputes relating to an elder which focuses on the elder's wants, needs, and best interests. Such a process will protect and preserve the elder's exercisable rights.

(c) By recognizing that every elder, including those whose capacity is being questioned, has unique needs, interests, and differing abilities, the Legislature intends for this section to promote the public welfare by establishing a unique dispute resolution option to complement and enhance, not replace, other services, such as the provision of legal information or legal

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representation; financial advice; individual or family therapy; medical, psychological, or psychiatric evaluation; or mediation, specifically for issues related to the care and needs of elders. The Legislature intends that this section be liberally construed to accomplish these goals.

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

(a) "Action" means a proceeding in which a party sought or seeks a judgment or an order from the court to:

1. Determine if someone is or is not incapacitated pursuant to s. 744.331.

2. Appoint or remove a guardian.

3. Undertake an investigation pursuant to s. 415.104.

4. Audit an annual guardianship report.

5. Review a proxy's decision pursuant to s. 765.105.

6. Appoint a guardian advocate pursuant to s. 393.12.

7. Enter an injunction for the protection of an elder under s. 825.1035.

8. Follow up on a complaint made to the Office of Public and Professional Guardians pursuant to s. 744.2004.

9. Address advice received by the court from the clerk of the court pursuant to s. 744.368(5).

10. At the discretion of the presiding judge, address other matters pending before the court which involve the care or safety of an elder or the security of an elder's property.

(b) "Elder" means a person 60 years of age or older who is alleged to be suffering from the infirmities of aging as manifested by a physical, a mental, or an emotional dysfunction to the extent that the elder's ability to provide adequately for the protection or care of his or her own person or property is

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88 impaired.

89 (c) "Eldercaring coordination" means an elder-focused
90 dispute resolution process during which an eldercaring
91 coordinator assists an elder, legally authorized decisionmakers,
92 and others who participate by court order or by invitation of
93 the eldercaring coordinator, in resolving disputes regarding the
94 care and safety of an elder by:

95 1. Facilitating more effective communication and
96 negotiation and the development of problem-solving skills.

97 2. Providing education about eldercare resources.

98 3. Facilitating the creation, modification, or
99 implementation of an eldercaring plan and reassessing it as
100 necessary to reach a resolution of ongoing disputes concerning
101 the care and safety of the elder.

102 4. Making recommendations for the resolution of disputes
103 concerning the care and safety of the elder.

104 5. With the prior approval of the parties to an action or
105 of the court, making limited decisions within the scope of the
106 court's order of referral.

107 (d) "Eldercaring coordination communication" means an oral
108 or a written statement or nonverbal conduct intended to make an
109 assertion by or to an eldercaring coordinator or individuals
110 involved in eldercaring coordination made during an eldercaring
111 coordination activity, or before the activity if made in
112 furtherance of eldercaring coordination. The term does not
113 include statements made during eldercaring coordination which
114 involve the commission of a crime, the intent to commit a crime,
115 or ongoing abuse, exploitation, or neglect of a child or
116 vulnerable adult.

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117 (e) "Eldercaring coordinator" means an impartial third
118 person who is appointed by the court or designated by the
119 parties and who meets the requirements of subsection (5). The
120 role of the eldercaring coordinator is to assist parties through
121 eldercaring coordination in a manner that respects the elder's
122 need for autonomy and safety.

123 (f) "Eldercaring plan" means a continually reassessed plan
124 for the items, tasks, or responsibilities needed to provide for
125 the care and safety of an elder which is modified throughout
126 eldercaring coordination to meet the changing needs of the elder
127 and which takes into consideration the preferences and wishes of
128 the elder. The plan is not a legally enforceable document, but
129 is meant for use by the parties and participants.

130 (g) "Good cause" means a finding that the eldercaring
131 coordinator:

132 1. Is not fulfilling the duties and obligations of the
133 position;

134 2. Has failed to comply with any order of the court, unless
135 the order has been superseded on appeal;

136 3. Has conflicting or adverse interests that affect his or
137 her impartiality;

138 4. Has engaged in circumstances that compromise the
139 integrity of eldercaring coordination; or

140 5. Has had a disqualifying event occur.

141
142 The term does not include a party's disagreement with the
143 eldercaring coordinator's methods or procedures.

144 (h) "Legally authorized decisionmaker" means an individual
145 designated, either by the elder or by the court, pursuant to

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chapter 709, chapter 744, chapter 747, or chapter 765 who has the authority to make specific decisions on behalf of the elder who is the subject of an action.

(i) "Participant" means an individual who joins eldercaring coordination by invitation of or with the consent of the eldercaring coordinator but who has not filed a pleading in the action from which the case was referred to eldercaring coordination.

(j) "Party" includes the elder who is the subject of an action and any other individual over whom the court has jurisdiction.

(3) REFERRAL.—

(a) Upon agreement of the parties to the action, the court's own motion, or the motion of a party to the action, the court may appoint an eldercaring coordinator and refer the parties to eldercaring coordination to assist in the resolution of disputes concerning the care and safety of the elder who is the subject of an action.

(b) The court may not refer a party who has a history of domestic violence or exploitation of an elderly person to eldercaring coordination unless the elder and other parties in the action consent to such referral.

1. The court shall offer each party an opportunity to consult with an attorney or a domestic violence advocate before accepting consent to such referral. The court shall determine whether each party has given his or her consent freely and voluntarily.

2. The court shall consider whether a party has committed an act of exploitation as defined in s. 415.102(8) or s.

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175 825.103(1) or domestic violence as defined in s. 741.28 against
176 another party or any member of another party's family; engaged
177 in a pattern of behaviors that exert power and control over
178 another party and that may compromise another party's ability to
179 negotiate a fair result; or engaged in behavior that leads
180 another party to have reasonable cause to believe that he or she
181 is in imminent danger of becoming a victim of domestic violence.
182 The court shall consider and evaluate all relevant factors,
183 including, but not limited to, the factors specified in s.
184 741.30(6)(b).

185 3. If a party has a history of domestic violence or
186 exploitation of an elderly person, the court must order
187 safeguards to protect the safety of the participants and the
188 elder and the elder's property, including, but not limited to,
189 adherence to all provisions of an injunction for protection or
190 conditions of bail, probation, or a sentence arising from
191 criminal proceedings.

192 (4) COURT APPOINTMENT.—A court appointment of an
193 eldercaring coordinator is for a term of up to 2 years and the
194 court shall conduct review hearings intermittently to determine
195 whether the term should be concluded or extended. Appointments
196 conclude upon expiration of the term or upon discharge by the
197 court, whichever occurs earlier.

198 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

199 (a) The court shall appoint qualified eldercaring
200 coordinators who meet the requirements of each of the following:

201 1. Meet one of the following professional requirements:

202 a. Be licensed as a mental health professional under
203 chapter 491 and hold at least a master's degree in the

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professional field of practice;

b. Be licensed as a psychologist under chapter 490;

c. Be licensed as a physician under chapter 458;

d. Be licensed as a nurse under chapter 464 and hold at least a master's degree;

e. Be certified by the Florida Supreme Court as a family mediator and hold at least a master's degree;

f. Be a member in good standing of The Florida Bar; or

g. Be a professional guardian as defined in s. 744.102(17) and hold at least a master's degree.

2. Complete all of the following:

a. Three years of post-licensure or post-certification practice;

b. A family mediation training program certified by the Florida Supreme Court;

c. An elder mediation training program that meets standards approved and adopted by the Florida Supreme Court. If the Florida Supreme Court has not yet adopted such standards, the standards for elder mediation training approved and adopted by the Association for Conflict Resolution apply; and

d. Eldercaring coordinator training. The training must total at least 28 hours and must include eldercaring coordination; elder, guardianship, and incapacity law and procedures and less restrictive alternatives to guardianship as it pertains to eldercaring coordination; at least 4 hours on the implications of elder abuse, neglect, and exploitation and other safety issues in eldercaring coordination; the elder's role within eldercaring coordination; family dynamics related to eldercaring coordination; eldercaring coordination skills and

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techniques; multicultural competence and its use in eldercaring coordination; at least 2 hours of ethical considerations pertaining to eldercaring coordination; use of technology within eldercaring coordination; and court-specific eldercaring coordination procedures.

3. Successfully pass a Level 2 background screening as provided in s. 435.04(2) and (3) or be exempt from disqualification under s. 435.07.

4. Have not been a respondent in a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person.

5. Meet any additional qualifications the court may require to address issues specific to the parties.

(b) A qualified eldercaring coordinator must be in good standing or in clear and active status with all professional licensing authorities or certification boards.

(6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING COORDINATORS.—

(a) An eldercaring coordinator must resign and immediately report to the court if he or she no longer meets the minimum qualifications or if any of the disqualifying circumstances occurs.

(b) The court shall remove an eldercaring coordinator upon the eldercaring coordinator's resignation or disqualification or a finding of good cause shown based on the court's own motion or a party's motion.

(c) Upon the court's own motion or upon a party's motion, the court may suspend the authority of an eldercaring

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262 coordinator pending a hearing on the motion for removal. Notice
263 of hearing on removal must be timely served on the eldercaring
264 coordinator and all parties.

265 (d) If a motion was made in bad faith, a court may, in
266 addition to any other remedy authorized by law, award reasonable
267 attorney fees and costs to a party or an eldercaring coordinator
268 who successfully challenges a motion for removal.

269 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring
270 coordinator resigns, is removed, or is suspended from an
271 appointment, the court shall appoint a successor qualified
272 eldercaring coordinator who is agreed to by all parties or, if
273 the parties do not reach agreement on a successor, another
274 qualified eldercaring coordinator to serve for the remainder of
275 the original term.

276 (8) FEES AND COSTS.—The court may not order the parties to
277 eldercaring coordination without their consent unless the court
278 determines that the parties have the financial ability to pay
279 the eldercaring coordination fees and costs. The court shall
280 determine the allocation among the parties of fees and costs for
281 eldercaring coordination and may make an unequal allocation
282 based on the financial circumstances of each party, including
283 the elder.

284 (a) A party who is asserting that he or she is unable to
285 pay the eldercaring coordination fees and costs must complete a
286 financial affidavit form approved by the presiding court. The
287 court shall consider the party's financial circumstances,
288 including income; assets; liabilities; financial obligations;
289 and resources, including, but not limited to, whether the party
290 can receive or is receiving trust benefits, whether the party is

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291 represented by and paying a lawyer, and whether paying the fees
292 and costs of eldercaring coordination would create a substantial
293 hardship.

294 (b) If a court finds that a party is indigent based upon
295 the criteria prescribed in s. 57.082, the court may not order
296 the party to eldercaring coordination unless funds are available
297 to pay the indigent party's allocated portion of the eldercaring
298 coordination fees and costs, which may include funds provided
299 for that purpose by one or more nonindigent parties who consent
300 to paying such fees and costs, or unless insurance coverage or
301 reduced or pro bono services are available to pay all or a
302 portion of such fees and costs. If financial assistance, such as
303 health insurance or eldercaring coordination grants, is
304 available, such assistance must be taken into consideration by
305 the court in determining the financial abilities of the parties.

306 (9) CONFIDENTIALITY.—

307 (a) Except as otherwise provided in this section, all
308 communications made by, between, or among any parties,
309 participants, or eldercaring coordinator during eldercaring
310 coordination shall be kept confidential.

311 (b) The eldercaring coordinator, participants, and each
312 party designated in the order appointing the eldercaring
313 coordinator may not testify or otherwise offer evidence about
314 communications made by, between, or among the parties,
315 participants, and the eldercaring coordinator during eldercaring
316 coordination, unless one of the following applies:

317 1. Such communications are necessary to identify,
318 authenticate, confirm, or deny a written and signed agreement
319 entered into by the parties during eldercaring coordination.

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320 2. Such communications are necessary to identify an issue
321 for resolution by the court without otherwise disclosing
322 communications made by any party or the eldercaring coordinator.

323 3. Such communications are limited to the subject of a
324 party's compliance with the order of referral to eldercaring
325 coordination, orders for psychological evaluation, court orders
326 or health care provider recommendations for counseling, or court
327 orders for substance abuse testing or treatment.

328 4. The communications are necessary to determine the
329 qualifications of an eldercaring coordinator or to determine the
330 immunity and liability of an eldercaring coordinator who has
331 acted in bad faith or with malicious purpose or in a manner
332 exhibiting wanton and willful disregard for the rights, safety,
333 or property of the parties pursuant to subsection (11).

334 5. The parties agree that the communications be disclosed.

335 6. The communications are necessary to protect any person
336 from future acts that would constitute domestic violence under
337 chapter 741; child abuse, neglect, or abandonment under chapter
338 39; or abuse, neglect, or exploitation of an elderly or disabled
339 adult under chapter 415 or chapter 825, or are necessary in an
340 investigation conducted under s. 744.2004 or a review conducted
341 under s. 744.368(5).

342 7. The communications are offered to report, prove, or
343 disprove professional misconduct alleged to have occurred during
344 eldercaring coordination, solely for the internal use of the
345 body conducting the investigation of such misconduct.

346 8. The communications are offered to report, prove, or
347 disprove professional malpractice alleged to have occurred
348 during eldercaring coordination, solely for the professional

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malpractice proceeding.

9. The communications were willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.

(c) Notwithstanding paragraphs (a) and (b), confidentiality or privilege does not attach to a signed written agreement reached during eldercaring coordination, unless the parties agree otherwise, or to any eldercaring coordination communication:

1. For which the confidentiality or privilege against disclosure has been waived by all parties;

2. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence; or

3. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report.

(10) EMERGENCY REPORTING TO THE COURT.—

(a) An eldercaring coordinator must immediately inform the court by affidavit or verified report, without notice to the parties, if:

1. The eldercaring coordinator has or will be making a report pursuant to chapter 39 or chapter 415; or

2. A party, including someone acting on a party's behalf, is threatening or is believed to be planning to commit the offense of kidnapping upon an elder as defined in s. 787.01, or wrongfully removes or is removing the elder from the jurisdiction of the court without prior court approval or compliance with the requirements of s. 744.1098. If the

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378 eldercaring coordinator suspects that a party or family member
379 has relocated an elder within this state to protect the elder
380 from a domestic violence situation, the eldercaring coordinator
381 may not disclose the location of the elder unless required by
382 court order.

383 (b) An eldercaring coordinator shall immediately inform the
384 court by affidavit or verified report and serve a copy of such
385 affidavit or report on each party upon learning that a party is
386 the subject of a final order or injunction of protection against
387 domestic violence or exploitation of an elderly person or has
388 been arrested for an act of domestic violence or exploitation of
389 an elderly person.

390 (11) IMMUNITY AND LIMITATION ON LIABILITY.—

391 (a) A person who is appointed or employed to assist the
392 body designated to perform duties relating to disciplinary
393 proceedings involving eldercaring coordinators has absolute
394 immunity from liability arising from the performance of his or
395 her duties while acting within the scope of his or her appointed
396 functions or duties of employment.

397 (b) An eldercaring coordinator who is appointed by the
398 court is not liable for civil damages for any act or omission
399 within the scope of his or her duties under an order of referral
400 unless such person acted in bad faith or with malicious purpose
401 or in a manner exhibiting wanton and willful disregard for the
402 rights, safety, or property of the parties.

403 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
404 Court shall establish minimum standards and procedures for the
405 qualification, ethical conduct, discipline, and training and
406 education of eldercaring coordinators who serve under this

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407 section. The Florida Supreme Court may appoint or employ such
408 personnel as are necessary to assist the court in exercising its
409 powers and performing its duties under this section.

410 Section 2. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DENNIS BAXLEY

12th District

February 3, 2021

The Honorable Chair Jeff Brandes
414 Senate Office Building
Tallahassee, FL 32399

Dear Chair Brandes,

I would like to request that SB 368 Elder-focused Dispute Resolution Process be heard in the next Judiciary Committee Meeting.

This bill enables families to resolve disputes in a manner that respects the need, safety, and autonomy of their aging loved one in a private forum with the assistance of Elder-caring Coordinators.

Elder-caring coordination is a dispute resolution process modeled after the parenting coordination process, in which an elder-caring coordinator assists elders, legally authorized decision makers, and specified others to resolve disputes with high conflict levels that impact the elder's autonomy and safety.

Since 2015, eight Florida judicial circuits have participated in an elder-caring coordination pilot program. Participants reported: Fewer required court proceedings; Reduced family conflict; Minimized abuse, neglect, and exploitation of the elder; Reduced need for guardianships; and Faster, private resolution of non-legal issues.

This proposal would not require funding.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley
Senate District 12

DKB/dd

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

March 15, 2021

Meeting Date

SB 368

Bill Number (if applicable)

Topic Elder-focused Dispute Resolution Process

Amendment Barcode (if applicable)

Name Michelle Morley

Job Title Circuit Judge

Address Sumter County Courthouse, 215 McCollum Ave.

Phone 352-569-6960

Street

Bushnell

FL

33513

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Supreme Court Committee on ADR Rules and Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21

Meeting Date

368

Bill Number (if applicable)

975860

Amendment Barcode (if applicable)

Topic Elder-focused Dispute Resolution Process

Name Steve Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr

Street

Tallahassee

City

FL

State

32301

Zip

Phone 878-7364

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/2021

Meeting Date

368

Bill Number (if applicable)

Topic SB 368 Elder-focused Dispute Resolution Process

Amendment Barcode (if applicable)

Name Kimberly Renspie

Job Title Deputy Director of Advocacy & Strategic Partnerships

Address 215 S. Monroe Street, Suite 600

Phone 850-921-0808

Street

Tallahassee

FL

32311

Email krenspie@flclerks.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Court Clerks & Comptrollers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 400

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rodrigues

SUBJECT: Public Records

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 400 amends s. 119.07, F.S., to prohibit an agency that receives a public record request from responding to the request by filing an action for declaratory relief against the requester to determine whether that record meets the definition of a public record or if it is confidential or exempt.

The fiscal impact of the bill on state and local governments and their contractors is indeterminate. However, to the extent an agency is no longer permitted to use the declaratory judgment action as a vehicle to determine the rights and obligations of the parties under Chapter 119, F.S., an agency may incur greater litigation costs associated with cases challenging an agency's denial of access to records.

The bill takes effect July 1, 2021.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁶

Section 119.011(2), F.S., broadly 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.

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Making a Public Records Request

Section 119.07, F.S., sets out an orderly process for a citizen to request a public record:

1. The requestor contacts the agency in writing or orally to request to inspect or copy certain records.
2. The custodian or designee must acknowledge the request and respond to it in good faith.

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

3. The agency may then provide the records subject to exemptions and confidentiality, or deny the request and state the basis for their denial.

In cases where the agency is uncertain whether the requested documents constitute a “public record” or are subject to a public records exemption, the agency may:

- File an opinion request to the Attorney General; or
- File an action for declaratory relief in their local court seeking a declaratory judgment on the complained of uncertainty.

When a request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified. The requestor may also:

- File a civil action to enforce the Public Records Act;
- File a complaint with their local state attorney; or
- If it is a qualifying dispute, seek voluntary mediation using the Attorney General’s public records mediation program pursuant to s. 16.60, F.S.

Civil and Criminal Penalties

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to 1 year and a fine of up to \$1000.⁹ Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to 5 years and a fine of up to \$5,000.¹⁰

Reasonable attorney’s fees will be assessed against an agency found to have violated public records law.¹¹

Florida Attorney General Advisory Legal Opinions

The Attorney General must respond to requests for opinions from the Governor, members of the Cabinet, the head of an executive branch department, or certain members of the Florida Legislature. They are authorized, but not required, to respond to requests for opinions from members of the Legislature, other state officers, and officers of a county, municipality, other unit of local government, or political subdivision.¹² Private companies contracting with governments may be subject to public records laws but may not request Attorney General Opinions (AGO).

In order to request an AGO, attorneys for the public entity requesting an opinion must produce a legal memorandum to supply with their request. In 2020, the Attorney General issued nine

⁹ Section 119.10(2)(a), F.S.

¹⁰ Section 119.10(2)(b), F.S.

¹¹ Section 286.011(4), F.S.

¹² Section 16.01(3), F.S.

formal opinions – none of which related to the resolution of a public records dispute or a request under the Public Records Act, generally.¹³

In 2019, the Attorney General issued two opinions directed to requests regarding the Public Records Act:

- AGO 2019-14, addressing whether the Education Practices Commission is a state agency under ch. 119, 120, and 286, F.S.; and
- AGO 2019-08, addressing whether ch. 119, F.S., precludes an agency from engaging a “vendor to conduct penetration testing of the agency’s electronic data storage systems for the purpose of detecting and remedying vulnerabilities” where such testing would potentially allow the vendor to access information that is exempt under s. 119.071(4)(d)2.a & d., F.S., and confidential under s. 119.071(4)(a)l., F.S., (pertaining to social security numbers).

Public Records Mediation Program within the Office of Attorney General

Section 16.60(2), F.S., establishes a public records mediation program (Mediation Program) within the Office of the Attorney General (OAG). This unfunded and voluntary program is designed to assist the public in avoiding litigation regarding disputes over public records access. The term “mediation” is defined to mean a process whereby a neutral third person, the mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties.¹⁴ Section 16.60(1), F.S., is silent as to when mediation is appropriate or required. Section 16.60(3), F.S., requires the OAG to employ one or more mediators to mediate disputes involving access to public records. Currently, the mediation program employs one mediator.

The kinds of disputes that qualify for resolution under the s. 16.60, F.S., Mediation Program are extremely limited. An OAG mediator lacks authority to make a determination as to whether an agency has or has not violated the public records law. Additionally, an OAG mediator may not resolve a dispute involving whether an agency’s statement that it has no responsive records is or is not true. Thus, the Mediation Program’s process is foreclosed to parties that dispute a record’s status as a public record or as exempt/confidential. If these parties wish to avoid litigation - and time is not of the essence - they may seek an AGO. Otherwise, a civil action must be filed to resolve the dispute.

The OAG does not maintain a record of the number of mediations. However, the OAG estimates that the Mediation Program handles approximately 25 mediations a year which it considers to be informal dispute resolutions. The OAG considers a mediation to include only those instances in which there are communications from both sides with an OAG mediator and the mediator acts as a problem solver with both sides. Qualifying mediations generally fall into two categories:

- Where an OAG mediator works with a requestor to explain how to clarify their request such that the communication constitutes a request for records and does not merely pose a question; and

¹³ <http://www.myfloridalegal.com/ago.nsf/OP?open&RestricttoCategory=2020&Start=1&Count=30> (last visited Mar. 10, 2021). The Attorney General’s Office filed 14 formal opinions in 2019, 6 formal opinions in 2018, 8 in 2017, 18 in 2016, 14 in 2015, and 13 in 2014.

¹⁴ Section 16.60(1), F.S.

- Where disputes exist concerning the fees charged (as authorized by Chapter 119) by an agency to a requestor in disclosing the requested records.

Excluded from s. 16.60, F.S., mediations are those instances where an OAG mediator reaches out on behalf of the requestor and the matter is subsequently resolved without further action by the mediator. For example, the Mediation Program is frequently contacted by a requestor who has not received any response from an agency to the public records request. In these circumstances, the OAG mediator contacts counsel for the agency. Such contact, in the vast majority of cases, results in the agency notifying the mediator of its intent to contact the requestor and the mediator hears nothing further from either party.

Declaratory Judgments

A declaratory judgment is a binding decision issued by a court that establishes the rights of parties without providing for the enforcement of those rights.¹⁵ The Declaratory Judgment Act (the Act), Chapter 86, F.S., provides parties with a mechanism to adjudicate their rights without having to wait for a violation of those rights to occur, or the need to engage in conduct that might violate the rights of others.¹⁶ The Act exists “to settle and afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed.”¹⁷ “A party is entitled to a declaration of rights where the ripening seeds of controversy make litigation in the immediate future appear unavoidable.”¹⁸

When an agency is uncertain whether a document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint against the requestor for declaratory judgment.¹⁹ For example, the South Florida Water Management District (District), approximately 13 days after receiving a public records request, filed for a declaratory judgment that the requested transcripts were exempt from disclosure.²⁰ The trial court rendered final judgment for the District. The Fourth District Court of Appeal upheld the trial court’s ruling to permanently withhold portions or all of certain transcripts, and remanded for an in-camera review of the claimed “mediation communication” redactions.²¹

In *Butler*, Michael Butler made a public records request to the City of Hallandale Beach (City), on or about February 20, 2009, for the “distribution list” of a personal e-mail sent by the City’s mayor.²² On March 25, 2009, the City informed Butler the requested information did not constitute a “public record” because the email was not sent in connection with the discharge of any municipal duty.²³ Butler responded on April 1, 2009, asserting his right to access the

¹⁵ BLACK’S LAW DICTIONARY (11th ed. 2019).

¹⁶ See *Murphy v. Bay Colony Property Owners Ass’n*, 12 So.3d 924 (Fla. 2d DCA 2009).

¹⁷ Section 86.101, F.S.

¹⁸ *S. Riverwalk Investments, LLC v. City of Ft. Lauderdale*, 934 So. 2d 620, 623 (Fla. 4th DCA 2006).

¹⁹ *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).

²⁰ *South Florida Water Management District v. Everglades Law Center, Inc.*, 2017-1098-CA (19th Jud. Dist. Cir. Ct.).

²¹ *Everglades Law Ctr., Inc. v. S. Florida Water Mgmt. Dist.*, 290 So. 3d 123 (Fla. 4th DCA 2019), *review denied sub nom. Melzer v. S. Florida Water Mgmt. Dist.*, SC19-1993, 2020 WL 1894672 (Fla. Apr. 16, 2020), and *review denied*, SC19-2135, 2020 WL 1894689 (Fla. Apr. 16, 2020).

²² *Butler*, 68 So. 3d at 279.

²³ Complaint for Declaratory Relief at 3, *City of Hallandale Beach v. Michael Butler*, 2009 WL 10461181 (Fla. Cir. Ct.).

requested information.²⁴ The City, to determine the rights and obligations of the parties under Chapter 119, filed a complaint for declaratory relief against Butler, on or about April 27, 2009. The City sought a declaration that the requested information was not a “public record” and need not be disclosed.²⁵ The trial court agreed with the City and the Fourth District Court of Appeal affirmed.²⁶

Section 86.081, F.S., provides that the court may award costs as are equitable. Generally, each party bears its own costs and attorney fees. However, if such a civil action against an agency is required to enforce the public records law, and the requestor gave 5 days’ notice before filing the civil action, the court is required to award the costs of enforcement, including reasonable attorney’s fees, against the agency, if the court finds that the agency “unlawfully refused” to release the records.²⁷ If a court determines that the requestor made the request or filed suit for an improper purpose (e.g., harassment), the court awards attorney fees to the agency.²⁸

Because attorney fees are granted to a prevailing requestor, it is sometimes prudent for an agency or local government to bring suit immediately for clarification of the public records dispute in order to reduce fees at stake. Additionally, an agency facing harassing or otherwise improper requests has the option to bring suit to seek a determination that it does not need to respond to such requests.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07, F.S., to prohibit an agency from responding to a request to inspect or copy a record by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119. 011, F.S., or the status of the record as confidential or exempt from the provisions of s. 119.07(1), F.S. Thus, if an agency is uncertain as to whether the requested information is a public record, or is confidential or exempt, the agency must now: (1) release the records in question and risk being subject to the penalty provisions of s. 119.10, F.S.; (2) wait for the requestor to enforce the public records act by filing a civil action, and risk being subject to an award of attorney fees; or (3) initiate the process of requesting an AGO.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

²⁴ *Id.*

²⁵ *Butler*, 68 So. 3d at 279.

²⁶ *Id.* at 281.

²⁷ Section 119.12, F.S.

²⁸ Section 119.12(3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

CS/SB 400 may have an indeterminate positive fiscal impact on the private sector because individuals and entities that request public records will not be required to pay legal costs and fees associated with a declaratory action by an agency. However, to the extent a dispute arises and continues between an agency and a requestor as to the agency's violation of ch. 119, F.S., the private sector will be required to pay legal costs and fees associated with bringing a civil action to enforce the public records laws.

C. Government Sector Impact:

It is possible that removing an agency's ability to request a declaratory judgment and avoid sanctions or further lawsuits may result in increased litigation and associated costs being incurred by the governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.07 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 27, 2021:

The CS clarifies that after receiving a request to inspect or copy a record, an agency may not bring a declaratory judgment action against the requestor to determine whether that record meets the definition of a public record.

- B. **Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Rodrigues

585-01396-21

2021400c1

A bill to be entitled

An act relating to public records; amending s. 119.07,
F.S.; prohibiting an agency that receives a request to
inspect or copy a record from responding to such
request by filing an action for declaratory relief
against the requester; providing an effective date.

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

Section 1. Subsection (9) is added to section 119.07,
Florida Statutes, to read:

119.07 Inspection and copying of records; photographing
public records; fees; exemptions.—

(9) After receiving a request to inspect or copy a record,
an agency may not respond to that request by filing an action
for declaratory relief against the requester to determine
whether the record is a public record as defined by s. 119.011,
or the status of the record as confidential or exempt from the
provisions of s. 119.07(1).

Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

January 28, 2021

The Honorable Jeff Brandes
Senate Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 400 - Public Records

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place CS/SB 400, relating to public records, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Celia Georgiades, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

15 March 21
Meeting Date

400
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College
Street

Phone _____

TLH
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1378

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Corporate Espionage

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Favorable
2.	Bond	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1378 creates the “Combating Corporate Espionage in Florida Act” within s. 812.081, F.S.

The bill creates, amends, and reorganizes current definitions in s. 812.081(1), F.S. The bill amends the current third degree felony for theft of a trade secret to simplify language and move the offense from level 1 to level 3 on the offense severity chart.

The bill also creates a new second degree felony for trafficking in trade secrets. A person who traffics in, or attempts to traffic in, trade secrets commits the offense. Trafficking in trade secrets is a level 5 offense on the offense severity ranking chart.

The bill adds that, if a person commits either of the felony offenses described above with the intent to benefit a foreign government, foreign agent, or foreign instrumentality, the offense felony is reclassified as one degree higher, and the reclassified offense is increased one level on the offense severity ranking chart.

A court must order restitution if a person is convicted of violating s. 812.081, F.S., and the restitution must include the value of the benefit derived from the offense. The value of the benefit derived from the offense includes any expenses for research and design and other costs of reproducing the trade secret which the person has avoided by committing the offense. The bill also creates a civil cause of action for a victim of trade secret theft. The victim is entitled to injunctive relief and, where an injunction is not equitable, the victim is entitled to royalties.

The bill creates a defense to criminal and civil liability for a person who confidentially discloses a trade secret to an attorney, law enforcement officer, or government official, for purposes of reporting or investigating an offense. A disclosure made under seal in a legal proceeding is also protected.

The bill may have a positive indeterminate (i.e. unquantifiable increase) prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Trade Secrets

Section 812.081, F.S., defines a “trade secret” as information¹ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided in statute, and adopted by Florida courts,² requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.³

Section 812.081(2), F.S., makes it a third degree felony⁴ for a person to deprive or withhold from the owner the control of a trade secret or to intentionally misappropriate a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. It is not a defense, if a person returned or intended to return the article stolen, embezzled, or copied.⁵

What is Corporate (or Economic) Espionage?

According to the Federal Bureau of Investigation (FBI), historically, economic espionage has targeted defense-related and high-tech industries. But recent FBI cases have shown that no industry, large or small, is immune to the threat. Any company with a proprietary product, process, or idea can be a target; any unprotected trade secret is vulnerable to theft by those who

¹ A trade secret may manifest as “any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof” pursuant to s. 812.081(1)(c), F.S.

² See, e.g., *Sepro Corp. v. Dep’t. of Env’t. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³ Section 812.081(1)(c), F.S.

⁴ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 812.081(3), F.S.

wish to illegally obtain innovations to increase their market share at a victim company's expense.⁶ Examples of corporate espionage include:

- A person acting on behalf of himself or herself such as where a dissatisfied employee breaks into company records of his or her employer in order to cause damage to the company; or
- A person acting on behalf of a competitor company, such as where a company hires an employee (or an outside party) to illegally investigate a competitor's business.⁷

Technology-based companies are prone to industrial espionage issues, especially with regards to novel ideas or technology products. For instance, biotechnology companies, software firms, and automobile companies tend to be the target of corporate espionage. Transferring stolen company property or stolen trade secrets can also be considered espionage.⁸

The FBI reports that economic espionage is a problem that costs the American economy hundreds of billions of dollars per year. While it is not a new threat, it is a growing one, and theft attempts by foreign competitors and adversaries are becoming more brazen and varied. These foreign competitors deliberately target economic intelligence in advanced technologies and flourishing U.S. industries.⁹

Foreign Influence Uncovered in University Research Programs

According to a National Institutes of Health (NIH) Advisory Committee report, some foreign governments have initiated systematic programs to unduly influence and capitalize on U.S.-conducted research. Small numbers of scientists have committed serious violations of policies and systems by not disclosing foreign support (i.e., grants), laboratories, or funded faculty positions in other countries. These efforts by foreign governments to obtain a competitive advantage in critical areas of research and innovation at the cost of the research enterprises and those that fund them are few, but serious.¹⁰

For example, in 2019, four faculty members left the University of Florida (UF) after the university and the National Institutes of Health found possible ties to foreign institutions that may have violated funding and research rules.¹¹ The NIH first reached out to universities across the nation in August 2018 with a letter that expressed concerns about foreign entities trying to influence U.S. research. The NIH later identified two UF faculty members who may have been

⁶ FBI, What We Investigate, *Counterintelligence, Economic Espionage*, available at <https://www.fbi.gov/investigate/counterintelligence> (last visited March 5, 2021). See also FBI, What We Investigate, *Counterintelligence, Economic Espionage, News, Stories, Trade Secret Theft, Investigation into Theft of Intellectual Property from GE Leads to Two Guilty Pleas*, July 29, 2020, available at <https://www.fbi.gov/news/stories/two-guilty-in-theft-of-trade-secrets-from-ge-072920> (last visited Mar. 5, 2021).

⁷ LegalMatch, *What is Industrial Espionage?*, available at <https://www.legalmatch.com/law-library/article/industrial-espionage-lawyers.html> (last visited Mar. 5, 2021).

⁸ *Id.*

⁹ FBI, What We Investigate, *Counterintelligence, Economic Espionage*, available at <https://www.fbi.gov/investigate/counterintelligence> (last visited Mar. 5, 2021).

¹⁰ NIH Advisory Committee to the Director (ACD), *ACD Working Group for Foreign Influences on Research Integrity*, December 2018 Report, p. 5, available at https://acd.od.nih.gov/documents/presentations/12132018ForeignInfluences_report.pdf (last visited Mar. 4, 2021).

¹¹ Emily Mavrakis, *UF: Former faculty did not disclose China affiliations*, THE GAINESVILLE SUN, January 22, 2020, available at <https://www.gainesville.com/news/20200122/uf-former-faculty-did-not-disclose-china-affiliations> (last visited Mar. 4, 2021).

connected to foreign entities. Through the university's own assessments, two additional faculty members raised concerns.¹² For example:

- One faculty member ("Faculty 1") had been employed by UF since 1995. In addition to serving as the vice president at a China university since at least 2017, Faculty 1 was the director of an institute at a different Chinese university. While conducting research at UF, Faculty 1 served as the principal investigator for one NIH-funded project. None of Faculty 1's foreign affiliations was reported to UF nor the NIH.
- "Faculty 3" joined UF as a postdoctoral associate in the College of Medicine, and was appointed as a part-time research associate professor in 2012. The researcher focused on virology, gene therapy and traditional Chinese medicine. Faculty 3 was the principal investigator on one NIH-funded project and co-principal investigator for a second project prior to termination. That faculty member received an undisclosed grant from China, had an appointment at a Chinese university since 2017 and received a Chinese Thousand Talents award.¹³

During a meeting of the Florida House Select Committee on the Integrity of Research Institutions, a national security spokesman for the U.S. Department of Justice said in a prepared statement that China is implicated in more than 80 percent of all economic espionage charges brought by the department since 2012.¹⁴

Federal Law

The Economic Espionage Act of 1996

The Economic Espionage Act of 1996 (EEA) was the first federal law to define¹⁵ and punish the theft or misappropriation of trade secrets. The EEA criminalizes theft of trade secrets and economic espionage, as follows:

- *Theft of trade secrets* means the intentional conversion of a trade secret to the economic benefit of someone other than the owner of the trade secret, with intent or knowledge that the offense will injure the owner.¹⁶ Theft of trade secrets is punishable by up to 10 years in federal prison and specified fines for an individual or a corporation.¹⁷

¹² *Id.* The NIH provided UF with more than \$208 million in research grant money in 2019.

¹³ *Id.*

¹⁴ *Id.* See also, Bill Gertz, 'Economic Espionage': Special DOJ unit cracks down on China's illicit activities, THE WASHINGTON TIMES, January 8, 2020, available at <https://www.washingtontimes.com/news/2020/jan/8/justice-department-special-china-unit-targets-beij> (last visited Mar. 4, 2021).

¹⁵ Under the EEA, a trade secret means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: the owner thereof has taken reasonable measures to keep such information secret; and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public. 18 U.S.C. 1839.

¹⁶ 18 U.S.C. 1832.

¹⁷ An individual may be fined up to \$250,000 or twice the value of the loss or gain associated with the offense, and a corporation may be fined up to \$5 million, twice the value of the loss or gain associated with the offense, or three times the value of the stolen trade secret. 18 U.S.C. 1832(a), 3571(c). Here and elsewhere, 18 U.S.C. 3571(d) provides as a general matter that the maximum for a criminal fine of any federal criminal offense is the greater of the standard amount set for the particular offense (e.g., \$250,000 for individuals convicted of a felony) or twice the gain or loss resulting from the offense.

- *Economic espionage* refers to theft of a trade secret with the intent or knowledge that such theft will benefit a foreign government, foreign instrumentality, or foreign agent.¹⁸ Economic espionage is punishable by up to 15 years in federal prison and specified fines for an individual or corporation.¹⁹

The EEA requires a sentencing court to order restitution, provides that property derived from, or used to facilitate, commission of the offense may be subject to confiscation under either civil or criminal forfeiture procedures, and the court may issue an order to protect the confidentiality of a trade secret during prosecution and the government may appeal its failure to do so.

Defend Trade Secrets Act

The Defend Trade Secrets Act of 2016²⁰ (DTSA) amended the remedies available under the EEA by establishing additional remedies for theft of a trade secret or corporate espionage, including, but not limited to, the following:

- The Attorney General may sue for injunctive relief.
- A trade secret's owner may bring a private civil action for damages, equitable and injunctive, court costs, and attorney fees.
- A civil seizure mechanism is available as a preventative measure prior to a formal finding that a trade secret has been misappropriated.
- The court may require affirmative actions be taken to protect the trade secret.
- In exceptional circumstances rendering an injunction inequitable, the court may condition future use of a trade secret on payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited.²¹

Because the DTSA does not preempt existing state trade secret law, a trade secret owner may choose to pursue a civil action for an offense in state or federal court.

III. Effect of Proposed Changes:

The bill creates the “Combating Corporate Espionage in Florida Act” in s. 812.081, F.S.

Definitions

The bill creates the following new definitions in s. 812.081(1), F.S.:

- “Endeavor” means to attempt or try.
- “Foreign agent” means any officer, employee, proxy, servant, delegate, or representative of a foreign government.
- “Foreign instrumentality” means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government.

¹⁸ 18 U.S.C. 1831(a).

¹⁹ An individual may be fined up to \$5 million or twice the value of the loss or gain associated with the offense, and a corporation may be fined up to \$10 million, twice the value of the loss or gain associated with the offense, or three times the value of the stolen trade secret. 18 U.S.C. 1831(a).

²⁰ 18 U.S.C. 1836.

²¹ *Id.*

- “Obtain or use” has the same meaning as provided in s. 812.012(3), F.S.;²² and
- “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- “Traffic” has the same meaning as provided in s. 812.012(8), F.S.²³

The bill amends the definition of “trade secret” to specify that a trade secret may be in tangible or intangible form; and is a trade secret regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

The bill repeals definitions of the terms “article,” “representing,” and “copy.”

Criminal Offenses Related to Trade Secrets

The bill amends the current third degree felony related to trade secrets to create the offense of Theft of a Trade Secret. The offense of theft of a trade secret is committed when a person willfully and without authorization obtains or uses a trade secret, or endeavors to obtain or use a trade secret, whether temporarily or permanently, if the person:

- Deprives or withholds the control or benefit of a trade secret; or
- Appropriates a trade secret for his or her own use, or for use by a person not entitled to the trade secret.

The bill creates a new second degree felony²⁴ offense of Trafficking in Trade Secrets. The offense is committed when a person traffics in, or endeavors to traffic in, trade secrets.

Reclassification of Offenses

If a person commits the felony offenses described above, the bill reclassifies these crimes one felony degree higher should he or she commit the offense with the intent to benefit a foreign government, foreign agent, or a foreign instrumentality.

Sentencing

The bill moves the third degree felony offense amended to become Theft of a Trade Secret from a Level 1 offense to a Level 3 offense on the offense severity ranking chart. The effect of this move is that the offender will be assessed more points when computing the sentence score.

²² Section 812.012(3), F.S., defines the term “obtains or uses” to mean any manner of:

- Taking or exercising control over property.
- Making any unauthorized use, disposition, or transfer of property.
- Obtaining property by fraud, willful misrepresentation of a future act, or false promise.
- Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or other conduct similar in nature.

²³ Section 812.012(8), F.S., defines the term “traffic” to mean to sell, transfer, distribute, dispense, or otherwise dispose of property; or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

²⁴ A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

The bill places the new second degree offense of Trafficking in Trade Secrets at level 5 on the offense severity ranking chart.

Where either of these offense are reclassified to one felony degree higher, the offense is also increased one level on the offense severity ranking chart.

Restitution, Injunctive Relief, Civil Action

The bill adds the requirement that the sentencing court must order restitution if a person is convicted of either offense. The restitution must include the value of the benefit derived from the offense. The value of the benefit derived from the offense includes any expenses for research and design and other costs of reproducing the trade secret that the person has avoided by committing the offense.

The bill also creates civil causes of action for the victim of theft or trafficking in a trade secret. The victim may seek an injunction against continued improper use of the trade secret. In the injunction, the court may require the defendant to take affirmative steps to protect the trade secret. Where exceptional circumstances render an injunction inequitable, the court may require payment of royalties to the victim, which must last no longer than time such use of the trade secret could have been protected by law.

Defense

The bill creates two defenses to criminal or civil liability for theft of a trade secret or trafficking in trade secrets:

- A disclosure of a trade secret made confidentially to an attorney, a law enforcement officer, or any other federal, state, or local government official for the purpose of reporting or investigating a suspected violation of law.
- A disclosure of a trade secret made in a document filed under seal in a civil action.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed CS/SB 1378. However, since the bill creates a new third degree felony and provides for the reclassification of certain offenses in specified instances, it will likely have a positive indeterminate (i.e., unquantifiable increase) in prison bed impact on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.081, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 15, 2021:

The committee substitute:

- Changed the name of the act to the “Combating Corporate Espionage in Florida Act.”
- Added new defined terms “endeavor,” “foreign agent,” and “foreign instrumentality”; and added repeals of currently defined terms “article,” “copy,” and “representing.”

- Changed the definition of “trade secret” to include all forms of possible trade secret.
- Modified the offense of obtaining or using a trade secret by renaming it as theft of a trade secret, clarifying language, and increasing the offense level from a level 1 to level 3 offense.
- Replaced the new third degree felony related to receiving or buying a trade secret with a new second degree felony of trafficking in trade secrets, placing it at level 5 in the offense severity chart. Like the offense of obtaining or using a trade secret, the offense of trafficking in trade secrets is reclassified as one felony degree higher and one level higher on the offense severity chart if committed with the intent to benefit a foreign government, a foreign agent or foreign instrumentality.
- Added a new civil cause of action to enjoin the continued improper use of a trade secret or to pay royalties if exceptional circumstances warrant.
- Added limited defenses to criminal and civil liability.

B. Amendments:

None.

By Senator Bradley

5-01553-21

20211378__

A bill to be entitled
An act relating to corporate espionage; providing a short title; amending s. 812.081, F.S.; providing definitions; prohibiting receipt of unlawfully obtained trade secrets; providing a penalty; reclassifying the penalty and increasing the offense severity ranking for receiving, obtaining, or using trade secrets to benefit a foreign government, foreign agent, or other foreign entity; requiring a court to order specified restitution for a violation; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the "Eliminating Corporate Espionage in Florida Act."

Section 2. Section 812.081, Florida Statutes, is amended to read:

812.081 Trade secrets; definitions; theft, ~~embezzlement~~; unlawful copying; unlawful receipt; providing to foreign entities; penalties; restitution ~~definitions~~; ~~penalty~~.—

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

(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

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20211378__

30 (e)~~(b)~~ "Representing" means completely or partially
31 describing, depicting, embodying, containing, constituting,
32 reflecting, or recording.

33 (c) "Obtains or uses" has the same meaning as provided in
34 s. 812.012(3).

35 (d) "Person" means a natural person, corporation, business
36 trust, estate, trust, partnership, association, joint venture,
37 government, governmental subdivision or agency, or any other
38 legal or commercial entity.

39 (f)~~(e)~~ "Trade secret" means the whole or any portion or
40 phase of any formula, pattern, device, combination of devices,
41 or compilation of information which is for use, or is used, in
42 the operation of a business and which provides the business an
43 advantage, or an opportunity to obtain an advantage, over those
44 who do not know or use it. The term includes any scientific,
45 technical, or commercial information, including financial
46 information, and includes any design, process, procedure, list
47 of suppliers, list of customers, business code, or improvement
48 thereof. Irrespective of novelty, invention, patentability, the
49 state of the prior art, and the level of skill in the business,
50 art, or field to which the subject matter pertains, a trade
51 secret is considered to be:

- 52 1. Secret;
53 2. Of value;
54 3. For use or in use by the business; and
55 4. Of advantage to the business, or providing an
56 opportunity to obtain an advantage, over those who do not know
57 or use it
58

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when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(b)~~(d)~~ "Copy" means any duplicate, facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) A ~~Any~~ person who, willfully and without authorization, obtains or uses ~~with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles~~ an article representing a trade secret or ~~without authority~~ makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(3) A person who intentionally receives, buys, or possesses an article representing a trade secret, knowing such trade secret to be obtained or used or copied without authorization, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Whenever any person is charged with committing an offense under this section and he or she commits the offense with the intent to benefit a foreign government, foreign agent, or other foreign entity against the interest of the state, the offense for which the person is charged shall be reclassified as a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of sentencing under chapter 921, a felony offense that is reclassified under

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20211378__

this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(5) A court shall order a person convicted of violating this section to pay restitution, which shall include the value of the benefit derived from the offense, including any expenses for research and design and other costs of reproducing the trade secret that the person has avoided by committing the offense.

(6) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the unlawfully obtained, used, ~~article so stolen, embezzled,~~ or copied article is not a defense.

Section 3. Paragraph (a) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2) (b)	3rd	Failure to remit sales taxes,

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20211378__

amount \$1,000 or more but less
than \$20,000.

109

316.1935(1)

3rd

Fleeing or attempting to elude
law enforcement officer.

110

319.30(5)

3rd

Sell, exchange, give away
certificate of title or
identification number plate.

111

319.35(1)(a)

3rd

Tamper, adjust, change, etc.,
an odometer.

112

320.26(1)(a)

3rd

Counterfeit, manufacture, or
sell registration license
plates or validation stickers.

113

322.212
(1)(a)-(c)

3rd

Possession of forged, stolen,
counterfeit, or unlawfully
issued driver license;
possession of simulated
identification.

114

322.212(4)

3rd

Supply or aid in supplying
unauthorized driver license or
identification card.

115

322.212(5)(a)

3rd

False application for driver
license or identification card.

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20211378__

116

414.39(3)(a) 3rd Fraudulent misappropriation of
public assistance funds by
employee/official, value more
than \$200.

117

443.071(1) 3rd False statement or
representation to obtain or
increase reemployment
assistance benefits.

118

509.151(1) 3rd Defraud an innkeeper, food or
lodging value \$1,000 or more.

119

517.302(1) 3rd Violation of the Florida
Securities and Investor
Protection Act.

120

713.69 3rd Tenant removes property upon
which lien has accrued, value
\$1,000 or more.

121

812.014(3)(c) 3rd Petit theft (3rd conviction);
theft of any property not
specified in subsection (2).

122

812.081(2) & (3) 3rd Obtaining, using, or copying
~~812.081(2)~~ ~~Unlawfully makes or causes to~~
~~be made a reproduction of a~~

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trade secret; unlawfully
receiving, buying, or
possessing a trade secret.

123

815.04 (5) (a)

3rd

Offense against intellectual
 property (i.e., computer
 programs, data).

124

817.52 (2)

3rd

Hiring with intent to defraud,
 motor vehicle services.

125

817.569 (2)

3rd

Use of public record or public
 records information or
 providing false information to
 facilitate commission of a
 felony.

126

826.01

3rd

Bigamy.

127

828.122 (3)

3rd

Fighting or baiting animals.

128

831.04 (1)

3rd

Any erasure, alteration, etc.,
 of any replacement deed, map,
 plat, or other document listed
 in s. 92.28.

129

831.31 (1) (a)

3rd

Sell, deliver, or possess
 counterfeit controlled
 substances, all but s.

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20211378__

893.03(5) drugs.

130

832.041(1) 3rd Stopping payment with intent to
defraud \$150 or more.

131

832.05(2)(b) & 3rd Knowing, making, issuing
(4)(c) worthless checks \$150 or more
or obtaining property in return
for worthless check \$150 or
more.

132

838.15(2) 3rd Commercial bribe receiving.

133

838.16 3rd Commercial bribery.

134

843.18 3rd Fleeing by boat to elude a law
enforcement officer.

135

847.011(1)(a) 3rd Sell, distribute, etc.,
obscene, lewd, etc., material
(2nd conviction).

136

849.09(1)(a)-(d) 3rd Lottery; set up, promote, etc.,
or assist therein, conduct or
advertise drawing for prizes,
or dispose of property or money
by means of lottery.

137

849.23 3rd Gambling-related machines;

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20211378__

"common offender" as to
property rights.

849.25(2) 3rd Engaging in bookmaking.

860.08 3rd Interfere with a railroad
signal.

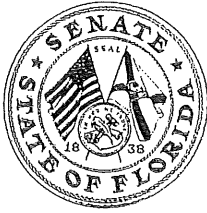
860.13(1)(a) 3rd Operate aircraft while under
the influence.

893.13(2)(a)2. 3rd Purchase of cannabis.

893.13(6)(a) 3rd Possession of cannabis (more
than 20 grams).

934.03(1)(a) 3rd Intercepts, or procures any
other person to intercept, any
wire or oral communication.

Section 4. This act shall take effect October 1, 2021.



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 9, 2021

Senator Jeff Brandes, Chairman
Committee on Judiciary
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1378 be placed on the committee's agenda at your earliest convenience. This bill amends existing statutes related to the theft of trade secrets and increases the penalty for the theft of intellectual property that benefits a foreign nation.

Thank you for your consideration of this request. Please let me know if I can provide additional information concerning this bill.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive.

Jennifer Bradley

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 468

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Expunction of Criminal History Records Relating to Certain Cannabis Offenses

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			CJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 468 provides for expunction of certain arrests solely for misdemeanor possession 20 grams or less of cannabis. A person may only qualify once. The process, procedure, and cost is identical to the general expunction law, only the eligibility criteria is different. A person is eligible for expunction under this bill whether or not he or she previously received relief under the existing laws on sealing or expunction, and is eligible for relief in the future under those laws if otherwise qualified. Unlike the general sealing and expunction law, this procedure applies to convictions as well as dismissals and dispositions by adjudication withheld. A person is ineligible to apply for relief while on probation related to the offense or for 1 year after disposition.

The fiscal impact of this committee substitute is indeterminate.

The bill is effective July 1, 2021.

II. Present Situation:

There are several limited forms of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether

a person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.¹

Sealing and Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency² that contains criminal history information.³ Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.⁴

Sealing

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record.⁵ A court may order a criminal history record sealed,⁶ rendering it confidential and exempt from Florida's public records laws.⁷ Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities⁸ for licensing, access authorization, and employment purposes.⁹

To seal a record, a person must first apply to the FDLE for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;

¹ *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged (last visited March 11, 2021).

² Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

³ Section 943.045(6), F.S.

⁴ Section 943.045(5), F.S.

⁵ Section 943.045(19), F.S.

⁶ Section 943.059, F.S.

⁷ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

⁸ Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

⁹ Sections 943.059(6)(a), F.S.

- Has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- Has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction; and
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.¹⁰

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.¹¹ A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.¹² It is solely within the court's discretion to grant or deny a petition to seal.¹³

A criminal history record is not eligible for court-ordered sealing if it relates to:

- Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.).
- Illegal use of explosives (Chapter 552, F.S.).
- Terrorism (Section 775.30, F.S.).
- Murder (Sections 782.04, 782.065, and 782.09, F.S.).
- Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.).
- Assault or battery of one family or household member by another family or household member¹⁴ (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).
- Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.).
- Stalking or aggravated stalking (Section 784.048, F.S.).
- Luring or enticing a child (Section 787.025, F.S.).
- Human trafficking (Section 787.06, F.S.).
- Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.).
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.).
- Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, Laws of Fla.)).
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.).
- Arson (Section 806.01, F.S.).
- Burglary of a dwelling (Section 810.02, F.S.).

¹⁰ Section 943.059(2), F.S.

¹¹ Section 943.059(3), F.S.

¹² Section 943.059(2)(b), F.S.

¹³ Section 943.059, F.S.

¹⁴ Section 741.28(3), F.S., defines family or household member as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.).
- Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.).
- Carjacking (Section 812.133, F.S.).
- Home invasion robbery (Section 812.135, F.S.).
- A violation of the Florida Communications Fraud Act (Section 817.034, F.S.).
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.).
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.).
- Child abuse or aggravated child abuse (Section 827.03, F.S.).
- Sexual performance by a child (Section 827.071, F.S.).
- Offenses by public officers and employees (Chapter 839, F.S.).
- Certain acts in connection with obscenity (Section 847.0133, F.S.).
- A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.).
- Selling or buying of minors (Section 847.0145, F.S.).
- Aircraft piracy (Section 860.16, F.S.).
- Manufacturing a controlled substance (Chapter 893, F.S.).
- Drug trafficking (Section 893.135, F.S.).
- Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.¹⁵

Expunction

A person may have his or her criminal history record expunged under certain circumstances.¹⁶ When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.¹⁷ The criminal history record retained by the FDLE is confidential and exempt.¹⁸ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.¹⁹

¹⁵ Sections 943.059(6)(b), F.S.

¹⁶ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

¹⁷ Section 943.045(16), F.S.

¹⁸ Section 943.0585(6)(a), F.S.

¹⁹ Section 943.0585(6), F.S.

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.²⁰ The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.²¹ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- The person has never secured a prior sealing or expunction, unless:
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.²²

Fees to Seal or Expunge Records

The application for a certificate of eligibility to seal or expunge under either statute must include a certified copy of the disposition. The length of a disposition is set locally. The clerk charges \$2 per document for a certification fee²³ plus \$1 a page for copying²⁴ the disposition. FDLE charges \$75 for the certificate of eligibility.²⁵

Other Types of Expunction

Other types of expunction include:

- Lawful self-defense expunction.²⁶
- Human trafficking victim expunction.²⁷
- Automatic Juvenile expunction.²⁸

²⁰ Section 943.0585(4), F.S.

²¹ Section 943.0585(2), F.S.

²² Section 943.0585(1), F.S.

²³ Section 28.24(2), F.S.

²⁴ Section 28.24(5)(a), F.S.

²⁵ Section 943.0585(2)(a)4., F.S.

²⁶ Section 943.0578, F.S.

²⁷ Section 943.0583, F.S.

²⁸ Section 943.0515(1)(b)1., F.S.

- Early juvenile expunction.²⁹
- Administrative Expunction.³⁰
- Juvenile diversion program expunction.³¹

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., to create a means for expunction of records related to a misdemeanor cannabis arrest.

A person is eligible for relief if such person:

- Was arrested for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- Was not convicted of, or pled no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- At least 1 year has elapsed since disposition of the offense.
- Is no longer under court supervision related to the cannabis arrest.
- Has not previously received an expunction under this section.

The procedures, process, qualifications, costs, and limitations are otherwise the same as expungement pursuant to existing s. 943.0585, F.S., including:

- The requirement to apply for a certificate of eligibility from the Department of Law Enforcement.
- The requirement to file a motion for expungement with the sentencing court, attach the certificate of eligibility, and give notice to the state attorney.
- The right of the court to grant or deny relief.
- The effect of expungement, including the list of government agencies that may access the expunged record.
- The right of the person to lawfully deny the arrest, except as to the list of government agencies.

The bill provides that expungement under this section will not bar expungement under any other similar law on expungement of criminal history records.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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, section 18 of the Florida Constitution.

²⁹ Section 943.0515(1)(b)2., F.S.

³⁰ Section 943.0581, F.S.

³¹ Section 943.0582, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 943.0586, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 16, 2021:

The committee substitute re-drafted the bill in order to closely follow existing

expungement law codified at s. 943.0585, F.S. Significant policy changes made by the Committee Substitute include:

- The process is no longer completely free to the applicant, but will require a \$75 fee to the Department of Law Enforcement for a certificate of eligibility.
- The one year wait and the probation limitation are added.
- The petition must be filed with the sentencing court
- The clerk of court is not responsible for service on the state attorney.
- Expungement is limited to one time under this new section.
- No other contemporaneous offense is allowed.
- Expungement is not automatic, it may be denied by the court
- The exceptions allowing future access for select agencies was added.
- The CS specifies that expungement under this new section is not a bar to sealing or expungement of a different offense under another law.

B. Amendments:

None.

By Senator Bracy

11-00276-21

2021468__

1 A bill to be entitled
2 An act relating to expunction of criminal history
3 records relating to certain cannabis offenses;
4 creating s. 943.0586, F.S.; defining terms;
5 authorizing certain courts to order criminal justice
6 agencies to expunge the criminal history record of an
7 individual with a qualified cannabis offense upon such
8 individual filing a petition for expunction;
9 authorizing an individual to petition for expunction
10 of such criminal history records at any time;
11 specifying petition requirements; requiring a court,
12 upon receipt of a petition, to serve the appropriate
13 state attorney and the arresting agency with a copy of
14 the petition; providing requirements if the state
15 attorney or the arresting agency object to the court
16 granting the petition; requiring the court to grant
17 the petition if no objection is filed; imposing duties
18 on the clerk of the court and the arresting agency if
19 a court grants such a petition; providing
20 construction; requiring that a criminal justice agency
21 that has custody of any criminal history record
22 ordered expunged physically destroy or obliterate the
23 record; providing for the effect of expunged criminal
24 history records; prohibiting a court or criminal
25 justice agency from charging the petitioner fees in
26 connection with the petition; providing a statement
27 regarding certain references and the doctrine of
28 incorporation by reference; providing an effective
29 date.

11-00276-21

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

Section 1. Section 943.0586, Florida Statutes, is created to read:

943.0586 Expunction of criminal history records relating to qualifying cannabis offenses.—

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

(a) "Domestic violence" has the same meaning as in s. 741.28. The term includes any crime the underlying factual basis of which has been found by a court to include an act of domestic violence and any act of domestic violence between dating partners as described in s. 784.046(1)(d).

(b) "Qualifying cannabis offense" means one or more misdemeanor convictions of obtaining, purchasing, or possessing 20 grams or less of cannabis. The term does not include a misdemeanor conviction of obtaining, purchasing, or possessing 20 grams or less of cannabis if, in connection with such offense, the individual was found guilty or pled guilty or no contest to a felony offense, to driving under the influence, or to an act of domestic violence.

(2) Notwithstanding any other provision of law, upon the filing of a petition for expunction as provided in this section, any court in the circuit in which the petitioner was arrested or in which the petitioner resides may order a criminal justice agency to expunge the criminal history record of an individual with a qualifying cannabis offense who complies with the requirements of this section. A petition need not be filed in the court where the petitioner's criminal proceedings in

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connection with the offense were conducted.

(3) An individual may petition for the expunction of a criminal history record resulting from a qualifying cannabis offense at any time.

(4) Each petition to a court to expunge a qualifying cannabis offense is complete only when accompanied by:

(a) The petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief; and

(b) A certified copy of the disposition of any charge to which the petition to expunge pertains.

(5) Upon a court receiving a petition under this section, the court shall, as soon as practicable, serve the appropriate state attorney and the arresting agency with a copy of the completed petition. The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means.

(a) If the state attorney or the arresting agency objects to the court granting the petition, a written objection must be filed with the court within 10 days after the date on which the request was received. If such an objection is filed, the court must hold a hearing on the request. At the hearing, the court must grant the petition unless the state attorney or the arresting agency establishes by clear and convincing evidence that there is good cause not to grant the request.

(b) If the state attorney or the arresting agency does not file a written objection with the court, the court must grant the petition.

(c) If the petition is granted by the court, the clerk of

11-00276-21

2021468__

88 the court shall certify copies of the order to the appropriate
89 state attorney and the arresting agency. The arresting agency is
90 responsible for forwarding the order to any other agency listed
91 in the court order to which the arresting agency disseminated
92 the criminal history record information covered by the order.
93 The clerk of the court shall certify a copy of the order to any
94 other agency that the records of the court reflect received the
95 criminal history record from the court.

96 (6) (a) The courts of this state have jurisdiction over
97 their own procedures, including the maintenance, expunction, and
98 correction of judicial records containing criminal history
99 information, to the extent that such procedures are not
100 inconsistent with the conditions, responsibilities, and duties
101 established by this section.

102 (b) Any criminal history record of an individual which is
103 ordered expunged pursuant to this section must be physically
104 destroyed or obliterated by any criminal justice agency having
105 custody of such record.

106 (c) The individual who is the subject of a criminal history
107 record that is expunged under this section may lawfully deny or
108 fail to acknowledge the arrests or convictions covered by the
109 expunged records.

110 (d) The individual who has been granted an expunction under
111 this section may not be held under any law of this state to
112 commit perjury or to be otherwise liable for giving a false
113 statement by reason of such individual's failure to recite or
114 acknowledge an expunged criminal history record.

115 (7) A court or criminal justice agency may not charge an
116 individual a fee to complete a petition under this section or to

11-00276-21

2021468__

117 obtain the necessary documents to complete a petition under this
118 section.

119 (8) Any reference to any other chapter, section, or
120 subdivision of the Florida Statutes in this section constitutes
121 a general reference under the doctrine of incorporation by
122 reference.

123 Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Rules
Transportation

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response, *Vice Chair*

SENATOR RANDOLPH BRACY
11th District

March 10, 2021

The Honorable Jeff Brandes
Chairman, Committee on Judiciary
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I write to respectfully request that the following bills be placed on the agenda of the Senate Judiciary Committee.

- **SB 442 - Juror Service:** The purpose of the bill is to increase juror pay based on the rate it was last increased in 1993 (adjusted for inflation). The bill also repeals the statute and court rule which govern peremptory challenges in criminal trials.
- **SB 444 - Arrest Booking Photographs:** Prohibits arrest booking photographs from becoming public unless there is an immediate threat to the public or if the disclosure serves a specific law enforcement purpose.
- **SB 448 - Hate Crimes:** Any person who willfully conveys false information to law enforcement about the alleged commission of a crime, where no such crime had actually been committed, is punished by a misdemeanor of the first degree.
- **SB 454 - Data Reporting:** Requires each law enforcement agency to collect data and report to the Department of Law Enforcement on a monthly basis. The following data must be reported: number of law enforcement officer stops and the race or ethnicity of each law enforcement officer; the race or ethnicity of each law enforcement officer and person involved in the arrest or issuance of notice to appear; and whether the arrest was a result of vehicle traffic stop, made on foot, or by other means.
- **SB 458 - Use of Force by LEOs:** For an officer criminally charged with an offense in connection to use of force in making an arrest, the court must also consider and instruct the jury accordingly that officer's actions were reasonable under the totality of the circumstances. In making that determination, the court must consider whether the officer engaged in de-escalation measures before using force and whether the officer's conduct before using force increased the risk that forced was used.
- **SB 468/470 - Expunction of Criminal History Records Relating to Certain Cannabis Offenses:** Establishes process for individuals with marijuana criminal convictions of 20 grams or less to have records expunged.

REPLY TO:

□ 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
□ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

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THE FLORIDA SENATE
APPEARANCE RECORD

3/15/21

Meeting Date

SB 468

Bill Number (if applicable)

Topic Expunction of Criminal History Records Relating to Certain Cannabis Offenses

Amendment Barcode (if applicable)

Name Vittorio Nastasi

Job Title Policy Analyst

Address 901 Riggins Road

Phone 407-618-6168

Street

Tallahassee

FL

32308

City

State

Zip

Email vittorio.nastasi@reason.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Reason Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

SB 488

Bill Number (if applicable)

Topic Cannabis Offenses

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Director

Address Po Box 11254

Phone (850) 354-8424

Street

Tallahassee

FL

32302

City

State

Zip

Email NORMLTallahassee@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NORML Tallahassee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/15/2021

Meeting Date

468

Bill Number (if applicable)

Topic CANNABIS Crimes Expungement

Amendment Barcode (if applicable)

Name Jodi James

Job Title Legislative Director

Address 1375 Cypress Ave

Street

Melbourne

City

FL

State

32935

Zip

Phone 321 890 1302

Email ~~james~~ Jodi@FLCAN.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Cannabis Action Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21

Meeting Date

SB 468

Bill Number (if applicable)

Topic Expunction of Criminal History Records Relating to Certain Cannabis Offenses

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

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Reset Form

3/15/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

468

Bill Number (if applicable)

Topic Expunction of Crimn'l History Records Re:Certain Cannabis Records

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

Email TcgLobby@aol.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4693
Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name Sean Pittman

Job Title Lobbyist

Address 1028 E Park Ave

Phone _____

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/21

Meeting Date

468

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 301 N Gadsden St

Phone 850 488-6850

Street

Tallahassee FL 32301

City

State

Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate
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 Judiciary

BILL: CS/SB 470

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Public Records/Expunged Criminal History Records

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			CJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 is the public records exemption bill linked to CS/SB 468. The bill provides that records of the Department of Law Enforcement related to expunged records of a cannabis arrest are confidential and exempt. Exceptions are made for certain state agencies to access such records for limited purposes, and a first degree misdemeanor is created for dissemination of such records without authority. The exemption, exceptions, and offense are consistent with other similar laws on sealing or expungement of a criminal history record.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as SB 468 or similar legislation takes effect. CS/SB 468 is effective on July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption; however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Criminal Expunction

Criminal records retained by the Department of Law Enforcement after sealing or expungement are confidential and exempt, with limited exceptions.

III. Effect of Proposed Changes:

The bill provides that a criminal history record ordered expunged pursuant to the provisions of CS/SB 468 and which is retained by the Department of Law Enforcement is confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the State Constitution.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

The bill also creates exceptions allowing limited access to the expunged record held by the Department of Law Enforcement for employment, access authorization, or licensure reasons, when such record is related to a person who is:

- A candidate for employment with a criminal justice agency.
- A candidate for admission to The Florida Bar.
- A person employed by or about to be employed by one of these agencies or a contractor of these agencies and who will be in a sensitive position having direct contact with children, the disabled, or the elderly:
 - Department of Children and Families.
 - Division of Vocational Rehabilitation within the Department of Education.
 - Agency for Health Care Administration.
 - Agency for Persons with Disabilities.
 - Department of Health.
 - Department of Elderly Affairs.
 - Department of Juvenile Justice.
- Seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services.
- Seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.

The bill also creates a first degree misdemeanor for any employee of an entity given access to an expunged record who discloses information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except for disclosure to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.

These exceptions and the misdemeanor offense are consistent with those in current law related to expungements at s. 943.0585, F.S.

This subsection is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or possession of small amounts of cannabis has had on minorities and disadvantaged communities. The Legislature further recognizes the trends in this state, and

nationally, of counties and localities decriminalizing the purchase or possession of small amounts of cannabis. Without this public records exemption, individuals with such low-level and nonviolent criminal history records who are granted expunction of such records might not be able to seek gainful employment and become productive, contributing members of this state. For these reasons, the Legislature finds that it is a public necessity that such records be made confidential and exempt.

This bill takes effect on the same date as SB 468 or similar legislation takes effect. As currently in the Senate, CS/SB 468 is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged, and therefore, requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged. Section 2 of the bill provides a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited criminal history records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The OGSF repeal language refers to repeal of the entire section, but perhaps should only repeal subsection (8) of s. 943.0586, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates subsection (8) in section 943.0586, Florida Statutes, which section is created by companion bill, CS/SB 468.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 15, 2020:

The committee substitute added references to the companion bill SB 468, added exceptions to the public records exemption consistent with changes made by amendment to SB 468 at the same committee meeting, and added a first degree misdemeanor related to those exceptions, which is consistent with similar public records laws.

B. Amendments:

None.

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

By Senator Bracy

11-00307-21

2021470__

A bill to be entitled

An act relating to public records; amending s. 943.0586, F.S.; providing an exemption from public records requirements for specified expunged criminal history records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 943.0586, Florida Statutes, as created by SB ____ or similar legislation, 2021 Regular Session, to read:

943.0586 Expunction of qualifying cannabis offenses.—

(9) A criminal history record ordered expunged under this section which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or

11-00307-21

2021470__

possession of small amounts of cannabis has had on minorities
and disadvantaged communities. The Legislature further
recognizes the trends in this state, and nationally, of counties
and localities decriminalizing the purchase or possession of
small amounts of cannabis. Without this public records
exemption, individuals with such low-level and nonviolent
criminal history records who are granted expunction of such
records might not be able to seek gainful employment and become
productive, contributing members of this state. For these
reasons, the Legislature finds that it is a public necessity
that such records be made confidential and exempt.

Section 3. This act shall take effect on the same date that
SB ___ or similar legislation takes effect, if such legislation
is adopted in the same legislative session or an extension
thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Rules
Transportation

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response, *Vice Chair*

SENATOR RANDOLPH BRACY

11th District

March 10, 2021

The Honorable Jeff Brandes
Chairman, Committee on Judiciary
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I write to respectfully request that the following bills be placed on the agenda of the Senate Judiciary Committee.

- **SB 442 - Juror Service:** The purpose of the bill is to increase juror pay based on the rate it was last increased in 1993 (adjusted for inflation). The bill also repeals the statute and court rule which govern peremptory challenges in criminal trials.
- **SB 444 - Arrest Booking Photographs:** Prohibits arrest booking photographs from becoming public unless there is an immediate threat to the public or if the disclosure serves a specific law enforcement purpose.
- **SB 448 - Hate Crimes:** Any person who willfully conveys false information to law enforcement about the alleged commission of a crime, where no such crime had actually been committed, is punished by a misdemeanor of the first degree.
- **SB 454 - Data Reporting:** Requires each law enforcement agency to collect data and report to the Department of Law Enforcement on a monthly basis. The following data must be reported: number of law enforcement officer stops and the race or ethnicity of each law enforcement officer; the race or ethnicity of each law enforcement officer and person involved in the arrest or issuance of notice to appear; and whether the arrest was a result of vehicle traffic stop, made on foot, or by other means.
- **SB 458 - Use of Force by LEOs:** For an officer criminally charged with an offense in connection to use of force in making an arrest, the court must also consider and instruct the jury accordingly that officer's actions were reasonable under the totality of the circumstances. In making that determination, the court must consider whether the officer engaged in de-escalation measures before using force and whether the officer's conduct before using force increased the risk that forced was used.
- **SB 468/470 - Expunction of Criminal History Records Relating to Certain Cannabis Offenses:** Establishes process for individuals with marijuana criminal convictions of 20 grams or less to have records expunged.

REPLY TO:

□ 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
□ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

3/15/21

Meeting Date

SB 470

Bill Number (if applicable)

Topic Public Records/Expunged Criminal History Records

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

Phone 850-681-0024

Street

Tallahassee

FL

32312

City

State

Zip

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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470

Meeting Date _____

Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name Sean Pittman

Job Title Lobbyist

Address 1020 E Park Ave

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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3/15/21
Meeting Date

470
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 301 N Gadsden St

Phone 850 488-6850

Palmahassee FL 32301
City State Zip

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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3/15/2021

Meeting Date

470

Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Jodi James

Job Title legislative Chair

Address 1375 Cypress Ave

Street

Melbourne FL 32935

City

State

Zip

Phone 321 890 7302

Email jodi@flcan.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Cannabis Action Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1346

INTRODUCER: Senator Brandes

SUBJECT: Felony Settlement Conferences

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1346 allows a circuit court to establish procedures for felony settlement conferences.

The bill is effective July 1, 2021.

II. Present Situation:

Disputes arise in society. Where the parties cannot resolve the dispute between themselves, the court system was created to resolve those disputes. Courts are inherently slow to act, expensive to navigate, and sometimes unpredictable in their rulings. Alternative dispute resolution, or “ADR,” is an alternative to judicial resolution of disputes. ADR generally describes the use of methods such as guided negotiation, mediation, or arbitration to help the parties resolve a dispute before trial. While ADR is common in the civil courts, it is rarely used in the criminal courts.

While formal ADR is uncommon in Florida’s criminal court, informal negotiation leading to a plea agreement or dismissal of the charges is prevalent. In the most recent year of reporting, 97.7 percent of Florida felony cases were resolved before trial by negotiated plea agreement or dismissal.¹ In the federal system, 97.6 percent of criminal cases nationwide are resolved by negotiated plea agreement.² On the other hand, every criminal case set for jury trial because plea negotiations have failed requires significant judicial resources and inconveniences the many citizens called for jury duty.

¹ FY 2019-20 Statistical Reference Guide, Florida State Courts, page 3-20.

² 2019 Annual Report and Sourcebook of Federal Sentencing Statistics, United States Sentencing Commission, page 56.

The Miami-Dade County circuit court recently tried a pilot program for felony settlement conferences. The pilot was a joint effort of the state attorney and public defender. A retired circuit court judge volunteered to act as a facilitator. The pilot was considered a success.³

III. Effect of Proposed Changes:

The bill creates s. 26.58, F.S., regarding felony settlement conferences. A circuit court may establish procedures for felony settlement conferences to facilitate further negotiation of settlements between parties to a pending felony criminal case if such parties have previously failed to reach a negotiated disposition. Such conferences must be presided over by a settlement conference judge, who must assist the parties in reaching a negotiated disposition over the pending matter. A settlement conference judge must be a retired judge or an attorney who had no involvement with the pending matter outside of the felony settlement conference process. The trial judge presiding over the pending matter may not preside over the felony settlement conference. A circuit court using felony settlement conferences may adopt any other necessary procedures.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

³ *Miami-Dade Circuit Has Groundbreaking Pilot Project to Mediate Criminal Cases*, Daily Business Review, November 19, 2020.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 26.58, Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Brandes

24-01768-21

20211346__

A bill to be entitled
An act relating to felony settlement conferences;
creating s. 26.58, F.S.; authorizing circuit courts to
establish settlement conferences in felony matters;
specifying the purpose of settlement conferences;
requiring settlement conferences to be presided over
by a settlement conference judge; specifying
requirements for settlement conference judges;
prohibiting the trial judge presiding over the pending
matter from presiding over the felony settlement
conference; authorizing circuit courts using felony
settlement conferences to adopt procedures; providing
an effective date.

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

Section 1. Section 26.58, Florida Statutes, is created to
read:

26.58 Felony settlement conferences.—A circuit court may
establish procedures for felony settlement conferences to
facilitate further negotiation of settlements between parties to
a pending felony criminal case if such parties have previously
failed to reach a negotiated disposition. Such conferences must
be presided over by a settlement conference judge, who must
assist the parties in reaching a negotiated disposition over the
pending matter. A settlement conference judge must be a retired
judge or an attorney who had no involvement with the pending
matter outside of the felony settlement conference process. The
trial judge presiding over the pending matter may not preside

24-01768-21

20211346__

over the felony settlement conference. A circuit court using
felony settlement conferences may adopt any other procedures to
administer this section.

Section 2. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21

Meeting Date

SB 1346

Bill Number (if applicable)

Topic Felony Settlement Conferences

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

Phone 850-681-0024

Street

Tallahassee

FL

32312

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/15/2021 3:33:40 PM

Ends: 3/15/2021 5:25:46 PM Length: 01:52:07

3:33:39 PM Meeting called to order by Chair Brandes
3:34:00 PM Roll call by Celia Georgiades
3:34:04 PM Comments from Chair Brandes
3:34:16 PM Introduction of Tab 8, 1378, Corporate Espionage by Chair Brandes
3:34:28 PM Explanation of Strike-all Amendment Barcode 268992 by Senator Bradley
3:35:58 PM Comments from Chair Brandes regarding Amendment
3:36:10 PM Question from Senator Thurston
3:36:39 PM Response from Senator Bradley
3:37:04 PM Follow-up question from Senator Thurston
3:37:12 PM Response from Senator Bradley
3:37:21 PM Follow-up question from Senator Thurston
3:37:33 PM Response from Senator Bradley
3:37:40 PM Question from Senator Rouson
3:37:48 PM Response from Senator Bradley
3:37:53 PM Response from Senator Bradley
3:38:24 PM Follow-up question from Senator Rouson
3:38:39 PM Response from Staff Attorney Nathan Bond
3:38:54 PM Comments from Senator Rouson
3:39:02 PM Question from Senator Gibson
3:39:11 PM Response from Senator Bradley
3:40:05 PM Follow-up question from Senator Gibson
3:40:11 PM Response from Senator Bradley
3:40:57 PM Follow-up question from Senator Gibson
3:41:04 PM Response from Senator Bradley
3:42:11 PM Comments from Chair Brandes
3:42:26 PM Closure waived
3:42:29 PM Amendment adopted
3:42:45 PM Comments from Chair Brandes
3:43:16 PM Senator Thurston in debate
3:44:07 PM Senator Bradley in closure
3:44:15 PM Roll call by CAA
3:44:27 PM CS/SB 1378 reported favorably
3:44:50 PM Introduction of Tab 1, CS/SB 496 by Chair Brandes
3:45:00 PM Explanation of CS/SB 496, Growth Management by Senator Perry
3:45:37 PM Introduction of Late-filed Amendment Barcode 294198 by Chair Boyd
3:45:54 PM Explanation of Amendment by Senator Brandes
3:46:33 PM Comments from Chair Boyd
3:47:08 PM Speaker Trish Neely, League Women Voters Florida in opposition
3:47:47 PM Comments from Chair Boyd
3:47:57 PM Question from Senator Thurston
3:48:11 PM Response from Senator Perry
3:48:32 PM Follow-up question from Senator Thurston

3:48:39 PM Response from Senator Perry
3:49:06 PM Closure waived
3:49:07 PM Amendment adopted
3:49:20 PM Comments from Chair Brandes
3:49:27 PM Question from Senator Thurston
3:49:38 PM Response from Senator Perry
3:51:09 PM Paul Owens, 1000 Friends of Florida waives in opposition
3:51:28 PM Jessica Lewis, Sierra Club waives in opposition
3:51:32 PM Lindsay Cross, Florida Conservation Voters waives in opposition
3:51:37 PM Speaker Gary Hunter, Association of Florida Community Developers waives in support
3:51:53 PM Diego Echeverri, Americans for Prosperity waives in support
3:52:15 PM Speaker Trish Neely, League Women Voters Florida in opposition
3:53:33 PM Question from Senator Thurston
3:53:44 PM Response from Ms. Neely
3:54:48 PM Follow-up question from Senator Thurston
3:54:59 PM Response from Ms. Neely
3:55:40 PM Comments from Chair Brandes
3:55:55 PM Senator Gibson in debate
3:57:21 PM Senator Thurston in debate
3:57:59 PM Comments from Chair Brandes
3:58:03 PM Senator Perry in closure
3:58:07 PM Roll call by CAA
3:58:56 PM CS/CS/SB 496 reported favorably
3:59:16 PM Introduction of Tab 6, SB 368 by Chair Brandes
3:59:36 PM Explanation of SB 368, Elder-focused Dispute Resolution Process by Senator Baxley
4:01:57 PM Introduction of Amendment Barcode 975860 by Chair Brandes
4:02:06 PM Explanation of Amendment by Senator Baxley
4:02:22 PM Comments from Chair Brandes
4:02:38 PM Amendment adopted
4:02:45 PM Comments from Chair Brandes
4:02:50 PM Question from Senator Thurston
4:03:04 PM Response from Senator Baxley
4:03:13 PM Follow-up question from Senator Thurston
4:03:27 PM Response from Senator Baxley
4:05:09 PM Follow-up question from Senator Thurston
4:05:17 PM Response from Senator Baxley
4:06:27 PM Comments from Chair Brandes
4:06:31 PM Speaker Michelle Morley, Circuit Judge, Florida Supreme Court Committee on ADR Rules and Policy in support
4:09:40 PM Follow-up question from Senator Thurston
4:09:55 PM Response from Judge Morley
4:11:51 PM Follow-up question from Senator Thurston
4:12:01 PM Response from Judge Morley
4:12:46 PM Steve Winn, Florida Osteopathic Medical Association waives in support
4:12:51 PM Kimberly Renspie, Florida Court Clerks & Comptrollers waives in support
4:12:58 PM Comments from Chair Brandes
4:13:02 PM Senator Gibson in debate
4:15:16 PM Senator Polsky in debate
4:15:37 PM Comments from Chair Brandes
4:15:42 PM Senator Baxley in closure
4:16:51 PM Roll call by CAA
4:17:19 PM CS/SB 368 reported favorably

4:17:45 PM Introduction of Tab 3, SB 1082 by Chair Brandes
4:17:52 PM Explanation of SB 1802, Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders by Senator Pizzo
4:18:43 PM Question from Senator Rouson
4:18:48 PM Response from Senator Pizzo
4:19:28 PM Comments from Chair Brandes
4:19:47 PM Closure waived
4:19:50 PM Roll call by CAA
4:19:55 PM SB 1802 reported favorably
4:20:13 PM Introduction of Tab 4, SB 1972 by Chair Brandes
4:20:19 PM Explanation of SB 1972, Expunction and Sealing of Judicial Records by Senator Pizzo
4:20:42 PM Comments from Chair Brandes
4:20:54 PM Question from Senator Bradley
4:21:02 PM Response from Senator Pizzo
4:23:50 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
4:23:59 PM Nancy Daniels, Florida Public Defender Association waives in support
4:24:12 PM David Serdar waives in support
4:24:23 PM Comments from Chair Brandes
4:24:27 PM Senator Pizzo in closure
4:24:35 PM Roll call by CAA
4:25:05 PM SB 1972 reported favorably
4:25:24 PM Introduction of Tab 5, SB 1974 by Chair Brandes
4:25:33 PM Explanation of SB 1974, Public Records/Domestic Violence Injunction by Senator Pizzo
4:25:51 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
4:25:55 PM David Serdar waives in support
4:26:00 PM Closure waived
4:26:03 PM Roll call by CAA
4:26:11 PM SB 1974 reported favorably
4:26:23 PM Introduction of Tab 7, CS/SB 400 by Chair Brandes
4:26:46 PM Explanation of CS/SB 400, Public Records by Senator Rodriguez
4:29:49 PM Comments from Chair Brandes
4:29:57 PM Diego Echeverri, American for Prosperity waives in support
4:30:04 PM
4:30:11 PM
4:30:12 PM Closure waived
4:30:15 PM CS/SB 400 reported favorably
4:30:36 PM Introduction of Tab 9, SB 468 by Chair Brandes
4:30:52 PM Explanation of SB 468, Expunction of Criminal History Records Relating to Certain Cannabis Offenses by Senator Bracy
4:31:56 PM Introduction of Delete-all Amendment Barcoded 956832 by Chair Brandes
4:32:13 PM Comments from Chair Brandes
4:32:20 PM Closure waived
4:32:23 PM Amendment adopted
4:32:34 PM Question from Senator Boyd
4:32:44 PM Response from Senator Bracy
4:33:45 PM Speaker Vittori Nastasi, Reason Foundation in support
4:36:20 PM Speaker Melissa Villar, NORML Tallahassee in support
4:38:40 PM Speaker Jode James, Florida Cannabis Action Network in support
4:41:12 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
4:41:15 PM Pamela Burch Fort, NAACP Florida State Conference waives in support
4:41:21 PM Sean Pittman, Broward County waives in support
4:41:26 PM Nancy Daniels, Florida Public Defender Association waives in support

4:41:39 PM Senate Thurston in debate
4:41:55 PM Senator Rouson in debate
4:42:28 PM Senator Boyd in debate
4:42:45 PM Senate Bracy in closure
4:42:54 PM Roll call by CAA
4:43:33 PM CS/SB 468 reported favorably
4:43:48 PM Introduction of Tab 10 along with Amendment SB 470 by Chair Brandes
4:44:09 PM Explanation of Amendment Barcode 970016 by Senator Bracy
4:44:31 PM Comments from Chair Brandes
4:44:34 PM Amendment adopted
4:44:48 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
4:44:51 PM Sean Pittman, Broward County waives in support
4:44:55 PM Nancy Daniels, Florida Public Defender Association waives in support
4:45:05 PM
4:45:06 PM Closure waived
4:45:11 PM Roll call by CAA
4:45:16 PM CS/SB 470 reported favorably
4:45:26 PM Chair turned over to Vice Chair Gibson
4:45:41 PM Introduction of Tab 11, SB 1346 by Chair Gibson
4:45:49 PM Explanation of SB 1346, Felony Settlement Conference by Senator Brandes
4:46:28 PM Comments from Chair Gibson
4:46:33 PM Question from Senator Rouson
4:46:41 PM Response from Senator Brandes
4:47:00 PM Follow-up question from Senator Rouson
4:47:07 PM Response from Senator Brandes
4:47:37 PM Response from Senator Brandes
4:47:39 PM Follow-up question from Senator Rouson
4:47:48 PM Response from Senator Brandes
4:47:58 PM Follow-up question from Senator Rouson
4:48:05 PM Response from Senator Brandes
4:48:38 PM Follow-up question from Senator Rouson
4:48:47 PM Response from Senator Brandes
4:49:28 PM Question from Senator Thurston
4:49:38 PM Response from Senator Brandes
4:50:07 PM Follow-up question from Senator Thurston
4:50:15 PM Response from Senator Brandes
4:50:28 PM Follow-up question from Senator Thurston
4:50:35 PM Response from Senator Brandes
4:50:41 PM Follow-up question from Senator Thurston
4:50:50 PM Response from Senator Brandes
4:51:15 PM Follow-up question from Senator Thurston
4:51:25 PM Response from Senator Brandes
4:51:36 PM Question from Senator Bradley
4:51:43 PM Response from Senator Brandes
4:52:03 PM Follow-up question from Senator Bradley
4:52:10 PM Response from Senator Brandes
4:52:40 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
4:52:56 PM Comments from Chair Gibson
4:53:10 PM Senator Rouson in debate
4:54:20 PM Response from Senator Brandes
4:55:18 PM Roll call by CAA
4:55:26 PM SB 1346 reported favorably

4:55:44 PM Chair returned to Senator Brandes
4:56:00 PM Introduction of Tab 2, SB 954 by Chair Brandes
4:56:09 PM Explanation of SB 954, Attorney Compensation by Senator Bean
4:58:14 PM Explanation of Strike-All Amendment Barcode 283472 by Senator Bean
4:58:25 PM Introduction of Delete-all Amendment Barcode 283472 by Chair Brandes
4:58:34 PM Question from Senator Rouson
4:58:53 PM Response from Senator Bean
4:59:40 PM Question from Senator Rouson
4:59:45 PM Response from Senator Bean
4:59:54 PM Follow-up question from Senator Rouson
5:00:06 PM Response from Senator Bean
5:00:11 PM Follow-up question from Senator Rouson
5:00:19 PM Response from Senator Bean
5:00:48 PM Follow-up question from Senator Rouson
5:01:00 PM Response from Senator Bean
5:01:20 PM Follow--up question from Senator Rouson
5:01:29 PM Response from Senator Bean
5:01:45 PM Follow-up question from Senator Rouson
5:01:53 PM Response from Senator Bean
5:02:32 PM Follow-up question from Senator Rouson
5:03:14 PM Response from Senator Bean
5:03:59 PM Question from Senator Thurston
5:04:08 PM Response from Senator Bean
5:04:38 PM Comments from Chair Brandes
5:04:49 PM Speaker Kenneth Pratt, Florida Bankers Association in opposition
5:05:24 PM Speaker Sarah Butters, The Real Property and Trust Law Section of the Florida Bar in opposition
5:09:56 PM Question from Senator Polsky
5:10:05 PM Response from Ms. Butters
5:13:13 PM Question from Senator Thurston
5:13:23 PM Response from Ms. Butters
5:15:45 PM Follow-up question from Senator Thurston
5:15:55 PM Response from Ms. Butters
5:17:16 PM Senator Baxley in debate
5:18:28 PM Senator Rouson in debate
5:20:08 PM Senator Bradley in debate
5:21:05 PM Closure waived
5:21:08 PM Amendment adopted
5:21:18 PM Comments from Chair Brandes
5:21:33 PM Sarah Butters, The Real Property, Probate and Trust Law Section of the Florida Bar waives in opposition
5:21:45 PM Senator Thurston in debate
5:22:38 PM Senator Rouson in debate
5:23:47 PM Senator Bean in closure
5:23:54 PM Roll call by CAA
5:24:16 PM CS/SB 954 reported favorably
5:24:44 PM Comments from Chair Brandes
5:24:50 PM Senator Broxson would like to be shown voting in the affirmative on Tabs 1-11
5:25:00 PM Senator Baxley would like to be shown voting in the affirmative on CS/SB 1378
5:25:12 PM Comments from Chair Brandes
5:25:18 PM Senator Baxley moves to adjourn
5:25:37 PM Meeting adjourned