

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Flores, Chair
Senator Joyner, Vice Chair

MEETING DATE: Thursday, January 19, 2012**TIME:** 10:15 a.m.—12:15 p.m.**PLACE:** Toni Jennings Committee Room, 110 Senate Office Building**MEMBERS:** Senator Flores, Chair; Senator Joyner, Vice Chair; Senators Braynon, Gardiner, Richter, Simmons, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 498 Criminal Justice / Lynn (Compare CS/H 233)	Substance Abuse Education and Intervention Programs; Providing that probation supervision services for defendants found guilty of certain misdemeanor controlled substance offenses may be provided by licensed substance abuse education and intervention programs; authorizing certain entities providing probation services to provide licensed substance abuse education and intervention programs; requiring private entities providing such programs to contract with the county and comply with other applicable provisions, etc. CJ 12/07/2011 Fav/CS JU 01/19/2012 Favorable BC	Favorable Yeas 6 Nays 0
2	SB 670 Ring (Compare H 671)	Real Property; Providing that a conveyance, transfer, or mortgage of real property, an interest in the real property, or a lease for a term of 1 year or longer is not valid against creditors or subsequent purchasers unless such documents are recorded in the official records; providing that a lien imposed on real property by a governmental or quasi-governmental entity for certain purposes is not valid against creditors or subsequent purchasers unless the lien is recorded and contains certain information, etc. JU 01/19/2012 Fav/CS CA BC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Thursday, January 19, 2012, 10:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 860 Wise (Compare CS/CS/H 481, H 937, CS/S 292)	Clerks of Court; Providing requirements for storage of electronic filings; requiring papers and electronic filings to be electronically time stamped; authorizing the clerk to remove sealed or expunged court records from the Official Records; clarifying provisions concerning free copies of records to specified officials and their staffs; defining the term "copy of a public record" for specified purposes; increasing the threshold amount for automatic repayment of overpayments; clarifying the application of an exemption from payment of fees and charges assessed by clerks of circuit courts; authorizing the use of electronic proof of publication affidavits; requiring certain persons to provide specific information to the clerk to maintain the public records exemption status of certain information; authorizing the clerk to issue a refund to the depositor for redeemed property subject to a tax sale, etc. JU 01/19/2012 Fav/CS GO BC	Fav/CS Yeas 6 Nays 0
4	SB 882 Dean (Identical H 4093)	Court Costs; Repealing provisions which prohibits the Supreme Court from taxing the costs of copies of records against the losing party under certain circumstances, etc. JU 01/19/2012 Favorable BC	Favorable Yeas 5 Nays 0
5	SB 858 Negron (Compare H 37, H 49, H 259, S 84, S 86, S 146)	Knowingly and Willfully Giving False Information to a Law Enforcement Officer; Providing that it is a third-degree felony for a person to knowingly and willfully give false information to a law enforcement officer conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation if the child suffers great bodily harm, permanent disability, permanent disfigurement, or death; providing criminal penalties, etc. CJ 01/12/2012 Favorable JU 01/19/2012 Favorable BC	Favorable Yeas 5 Nays 0
6	SM 1142 Hays (Identical HM 499, Compare HCR 8005)	Federal Balanced Budget Amendment; Urging Congress to propose to the states an amendment to the Constitution of the United States that requires the federal budget to be balanced each year. JU 01/19/2012 Fav/CS BC	Fav/CS Yeas 3 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

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Thursday, January 19, 2012, 10:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1236 Hays (Identical H 4119)	Liens for Ginning Cotton; Repealing provisions relating to liens for labor or services in ginning cotton, etc. JU 01/19/2012 Favorable AG BC	Favorable Yeas 5 Nays 0
8	CS/SB 210 Criminal Justice / Wise (Similar CS/H 135)	Costs of Prosecution, Investigation, and Representation; Providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld, etc. CJ 11/03/2011 Temporarily Postponed CJ 01/12/2012 Fav/CS JU 01/19/2012 Favorable BC	Favorable Yeas 5 Nays 0
9	SJR 408 Simmons (Identical HJR 345)	Revising Age Limits for Judges and Justices; Proposing an amendment to the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office. JU 01/19/2012 Favorable BC	Favorable Yeas 5 Nays 0
10	SB 988 Joyner (Identical H 733)	Probate; Excluding real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship from the definition of the term "protected homestead"; clarifying the application of amendments to s. 732.102, F.S., made by chapter 2011-183, Laws of Florida, relating to a spouse's share of an intestate estate; revising the period of time during which an attorney in fact or guardian of the property of a surviving spouse may petition for approval to elect to take a one-half interest in the decedent's homestead; specifying the minimum duration of an extension of time; barring inheritance rights of a natural or adoptive parent whose parental rights have been previously terminated pursuant to law; providing for application of the act, etc. JU 01/19/2012 Favorable	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Thursday, January 19, 2012, 10:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 990 Joyner (Similar H 851)	Natural Guardians; Revising provisions relating to the authority of natural guardians to act on behalf of their children, etc. JU 01/19/2012 Favorable CF	Favorable Yeas 5 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 Judiciary Committee

BILL: CS/SB 498

INTRODUCER: Criminal Justice and Senator Lynn

SUBJECT: Substance Abuse Education and Intervention Programs

DATE: January 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	White	Cibula	JU	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill gives county criminal courts the option of sentencing a defendant found guilty of misdemeanor possession of a controlled substance or drug paraphernalia to a licensed substance abuse education and treatment intervention program as a condition of probation.

The bill also expressly authorizes a licensed substance abuse education and treatment program to provide probation services to those misdemeanor drug offenders who are assigned to the program.

This bill substantially amends section 948.15 of the Florida Statutes.

II. Present Situation:

Florida's Drug Control Strategy, published in 2009, highlights the approach of treating the probation population for substance abuse.¹ Considering research indicating that “over half of all cocaine and heroin is purchased by individuals ... on pretrial release, probation, or parole,”² the report suggests that “a commitment to treatment” of those individuals formally under the control of the criminal justice system may “dramatically reduce the size and profitability of illicit markets by addressing the heaviest consumers.”³ In this way, investments in drug treatments for

¹Executive Office of the Governor Office of Drug Control, *Florida's Drug Control Strategy* (2009), <http://drugcontrol.flgov.com/pdfs/DRUGCONTROLSTRATEGY.pdf> (last visited Jan. 10, 2012).

² *Id.* at 7 (quoting National Research Council. (2001). *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us*. Manski, C. F., Pepper, J. V., & Petrie, C. V. (Eds.). Washington, DC: National Academy Press, p. 43.).

³ *Florida's Drug Control Strategy* (2009), at 7.

the probation population are thought to be able to shrink both the supply and demand in drug markets.⁴

Courts rely on existing treatment-based drug court programs, codified in statute, to place misdemeanor drug offenders in substance abuse programs offered by licensed service providers who deliver various licensed service components, including treatment and intervention. In this context, the licensed service provider must qualify for licensure as a service provider under chapter 397, relating to substance abuse services, and abide by the requirements for misdemeanor probation services providers in s. 948.15, F.S.

Substance Abuse Programs and Services

“Substance abuse” is defined as the misuse or abuse of, or dependence on alcohol, illicit drugs, or prescription medications.⁵ Individuals can become “substance abuse impaired” through the use of these substances “in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.”⁶ The Legislature has expressed that an individual progressing along a continuum of misuse, abuse, and dependence has an increased need for substance abuse intervention and treatment to help abate the problem.⁷ Towards this end, “substance abuse programs and services” (also known as “drug control”) have been established, and may include various efforts to limit substance abuse such as prevention, intervention, clinical treatment, recovery support initiatives, and efforts by law enforcement agencies.⁸

A licensed service provider as defined in s. 397.311(17), F.S., is “a public agency under this chapter [ch. 397], a private for-profit or not-for-profit agency ... , a physician or any other private practitioner ... , or a hospital that offers substance abuse services through one or more licensed service components.” Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services.⁹ The term “intervention” means structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.¹⁰

The Substance Abuse Program Office of the Department of Children and Family Services (DCF) licenses and regulates programs of all substance abuse providers in the state.¹¹ Licensure and other standards for substance abuse services can be found in Chapter 65-D30, F.A.C., including standards for detoxification, aftercare, intervention, prevention, and medication.

From the 2005-2006 fiscal year through the 2010-2011 fiscal year, the number of adults served by “adult substance abuse prevention, evaluation and treatment services” in Florida grew from

⁴ *Id.*

⁵ Section 397.311(36), F.S.

⁶ Section 397.311(14), F.S.

⁷ Section 397.311(36), F.S.

⁸ Section 397.331(1)(b), F.S.

⁹ Section 397.311(18), F.S.

¹⁰ Section 397.311(18)(b), F.S.

¹¹ Authorized by s. 397.321(6), F.S.

102,345 individuals per year to 111,564 individuals per year.¹² During these six years an average of 72 percent of the adults served had successfully completed substance abuse treatment services with no alcohol and other drug use during the month preceding discharge. For the 2009-2010 fiscal year, the DCF began recording another measurement which allows for evaluation of the extent to which treatment facilitates reduced subsequent criminal activity. Specifically, DCF measured the “percent change in the number of adults arrested 30 days prior to admission versus 30 days prior to discharge.”¹³ The findings seem to indicate a decrease in the arrest rate by 35 percent in the 2009-2010 fiscal year, and by 11 percent in the 2010-2011 fiscal year.¹⁴

Treatment-based Drug Court Programs as a Term of Misdemeanor Probation

Any state court having original jurisdiction of criminal actions may hear and determine the question of the probation of a defendant in a criminal case, with or without adjudicating the guilt of the defendant.¹⁵ The court may do so at a time to be determined by the court. Courts determine the terms and conditions of probation. Section 948.03, F.S., lists standard conditions of probation, such as submitting to random drug testing, yet “the enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto ... as proper.”¹⁶

Treatment-based Drug Court Programs

Treatment-based drug court programs offer a coordinated approach to addressing the more than 60 percent of all cases entering the criminal justice system which have a substance abuse nexus.¹⁷ Because these programs have the most sustained success in reducing substance abuse, they have been described as the “crown jewel” in drug treatment.¹⁸ An individual enrolled in a treatment-based drug court program is “subject to a coordinated strategy developed by a drug court team,” which may include “a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules.”¹⁹ The protocol of sanctions may include placement in a substance abuse treatment program offered by a licensed service provider.²⁰

Even before an information has been filed or an indictment has been returned in the circuit court, persons charged with a crime may be eligible for release to certain treatment-based drug court programs.²¹ These programs include the pretrial intervention program provided in s. 948.08, F.S., the misdemeanor pretrial substance abuse education and treatment intervention program

¹² Florida Department of Children and Families, Data on Adult Substance Abuse Prevention, Evaluation and Treatment Services, Performance Dashboard Application, <http://dcfdashboard.dcf.state.fl.us/> (last visited Jan. 12, 2012).

¹³ E-mail from Sen-Yoni Musingo, Ph.D., Florida Department of Children and Families, to Stephanie Colston, Florida Department of Children and Family Services (Jan. 11, 2012) (on file with the Senate Committee on Judiciary).

¹⁴ *Id.*

¹⁵ Section 948.01, F.S.

¹⁶ Section 948.03(2), F.S.

¹⁷ Bruce D. Grant, Florida Office of Drug Control, *2010 Transition Report* (Nov. 10, 2010), at 7, http://drugcontrol.flgov.com/pdfs/Transition_Report-Nov%2010.pdf (last visited Jan. 12, 2012).

¹⁸ *Id.*

¹⁹ Section 397.334(5), F.S. (Note, “[t]he coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.”).

²⁰ *Id.*

²¹ Section 948.08, F.S. See also s. 397.334(5), F.S.

provided in s. 948.16, F.S., and the juvenile delinquency pretrial intervention program provided in s. 985.345, F.S.

Postadjudicatory programs are provided under ss. 948.01(7)(a), 948.06, and 948.20, F.S. The sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if:²²

- the defendant's Criminal Punishment Code scoresheet total sentence points are 60 points or fewer;²³
- the offense is a nonviolent felony;
- the defendant is amenable to substance abuse treatment; and
- the defendant otherwise qualifies under s. 397.334(3), F.S.

The satisfactory completion of a postadjudicatory program is "a condition of the defendant's probation or community control."²⁴

Misdemeanor Probation Services

Section 948.15, F.S., provides for misdemeanor probation services. Even though "[a] private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court,"²⁵ s. 948.15, F.S., is written such that it would apply to private entities. It specifies that a private entity or public entity under the supervision of the board of county commissioners or the court may provide probation services for offenders sentenced by the county court.²⁶ Any private entity providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered.²⁷

A private entity that provides court-ordered services to offenders and that charges a fee for such services must register with the board of county commissioners in the county in which the services are offered.²⁸ The entity is required to provide the following information for each program it operates:

- The length of time the program has been operating in the county.
- A list of the staff and a summary of their qualifications.
- A summary of the types of services that are offered under the program.
- The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders.²⁹

The term of probation for a first-degree misdemeanor offense may be for up to one year.³⁰

²² Section 948.01(7)(a), F.S.

²³ As calculated under s. 921.0024, F.S.

²⁴ Section 948.01(7)(a), F.S.

²⁵ Section 948.01(1)(a), F.S.

²⁶ Section 948.15(3), F.S.

²⁷ *Id.*

²⁸ Section 948.15(4), F.S.

²⁹ *Id.*

III. Effect of Proposed Changes:

The bill provides that defendants found guilty of a misdemeanor drug or paraphernalia possession charge under chapter 893, F.S., may be placed by the county criminal court into a “licensed substance abuse education and treatment intervention program” as a condition of probation. The provisions in the bill apply to misdemeanor crimes, not felony crimes.

The bill also provides that a licensed substance abuse education and treatment intervention program may provide any other probation services, beyond the programmatic component, for this particular pool of offenders.

The bill does not appear to limit a county’s options with regard to contract for county court probation supervision services as it is currently set forth in s. 948.15, F.S.

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

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:**C. Government Sector Impact:**

County governments may be affected to the extent that the county chooses to enter into a contract for services with a licensed substance abuse education and intervention program that costs more (or less) than any current contractual obligations for probation services.

³⁰ Section 948.15(1), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to clarify the bill by replacing references to a “licensed substance abuse education and treatment intervention program” with a “substance abuse education and intervention program, licensed under chapter 397.”

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

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

CS by Criminal Justice on December 7, 2011:

Amendment 192440 deleted Section 1 from the original bill. This eliminated the bill’s amendment of s. 948.03, F.S., which is the felony probation statute. The amendment clarifies that the bill does not apply in felony cases and eliminates potential practitioner confusion.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Lynn

591-01567-12

2012498c1

A bill to be entitled

An act relating to substance abuse education and intervention programs; amending s. 948.15, F.S.; providing that probation supervision services for defendants found guilty of certain misdemeanor controlled substance offenses may be provided by licensed substance abuse education and intervention programs; authorizing certain entities providing probation services to provide licensed substance abuse education and intervention programs; requiring private entities providing such programs to contract with the county and comply with other applicable provisions; providing an effective date.

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

Section 1. Section 948.15, Florida Statutes, is amended to read:

948.15 Misdemeanor probation services.—

(1) A defendant ~~Defendants~~ found guilty of a misdemeanor ~~misdemeanors~~ who is ~~are~~ placed on probation shall be under supervision not to exceed 6 months unless otherwise specified by the court. Probation supervision services for a defendant found guilty of a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893 may be provided by a licensed substance abuse education and intervention program, which shall provide substance abuse education and intervention as well as any other terms and conditions of probation. In relation to any offense other than a felony in which the use of

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alcohol is a significant factor, the period of probation may be up to 1 year.

(2) A private entity or public entity, including a licensed substance abuse education and intervention program, under the supervision of the board of county commissioners or the court may provide probation services and licensed substance abuse education and treatment intervention programs for offenders sentenced by the county court.

(3) Any private entity, including a licensed substance abuse education and intervention program, providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. In a county having ~~with~~ a population of fewer ~~less~~ than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge, must approve the contract. Terms of the contract must state, but are not limited to:

(a) The extent of the services to be rendered by the entity providing supervision or rehabilitation.

(b) Staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.

(c) Staffing levels.

(d) The number of face-to-face contacts with the offender.

(e) Procedures for handling the collection of all offender fees and restitution.

(f) Procedures for handling indigent offenders which ensure placement irrespective of ability to pay.

(g) Circumstances under which revocation of an offender's

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probation may be recommended.

(h) Reporting and recordkeeping requirements.

(i) Default and contract termination procedures.

(j) Procedures that aid offenders with job assistance.

(k) Procedures for accessing criminal history records of probationers.

In addition, the entity shall supply the chief judge's office with a quarterly report summarizing the number of offenders supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated. All records of the entity must be open to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.

(4) A private entity that provides court-ordered services to offenders and that charges a fee for such services must register with the board of county commissioners in the county in which the services are offered. The entity shall provide the following information for each program it operates:

(a) The length of time the program has been operating in the county.

(b) A list of the staff and a summary of their qualifications.

(c) A summary of the types of services that are offered under the program.

(d) The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders.

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(5) The private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services ~~must~~ shall also comply with all other applicable provisions of law.

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-12

Meeting Date

Topic Substance Abuse EDUCATION

Bill Number SB 498
(if applicable)

Name MARK FONTAINE

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2868 MAHAN DRIVE
Street

Phone (850) 878-2196

TALLAHASSEE FL 32308
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA ALCOHOL + DRUG ABUSE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: CS/SB 498
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	1/19/2012 10:15AM 1 Motion to vote "YEA" after Roll Call		1/19/2012 10:15AM 2 Motion to vote "YEA" after Roll Call			
			Braynon		Simmons			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
VA		Braynon						
		Gardiner						
X		Richter						
VA		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
X		Flores, CHAIR						
	</							

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 670

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Real Property

DATE: January 19, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Munroe	Cibula	JU	Fav/CS
2. _____	_____	CA	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid against a creditor or subsequent purchaser only if it is properly recorded in the county in which the property is located and meets additional requirements for the recorded notice of lien to identify the property. The recorded notice of lien must contain:

- the name of the owner of record,
- a description or address of the property, and
- the tax or parcel identification number applicable to the property as of the date of recording.

This bill amends section 695.01, Florida Statutes.

II. Present Situation:

A lien is a charge or encumbrance upon property.¹ Liens include mortgages, construction liens, and other liens authorized by statute. Mortgages are liens on the property mortgaged.² Construction liens are authorized by statute.³

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.⁴

Section 695.01, F.S., is a notice recording statute and “Florida courts over time have described and applied Florida’s recording statute in a manner that is consistent with a ‘notice’ type of recording statute.”⁵ Under a notice type of recording statute, “a subsequent mortgagee of real property for value and without notice (actual and constructive)”⁶ of a prior mortgage of the real property will prevail against the prior mortgagee.”⁷

Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession.⁸ As a “lien theory” state, with a notice type recording statute, liens are generally afforded precedence based on whether subsequent purchasers have notice of the lien. The act of recording an instrument in compliance with s. 695.01, F.S., provides constructive notice of a prior encumbrance on the property which is the subject of the instrument.⁹ Grantees by quitclaim are deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.¹⁰

¹ BLACK’S LAW DICTIONARY 475 (Abridged 5th ed. 1983).

² Section 697.02, F.S.

³ See Chapter 713, F.S.

⁴ Section 695.01, F.S.

⁵ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

⁶ “Actual notice” means “notice expressly and actually given, and brought home to the party directly.” BLACK’S LAW DICTIONARY 550 (Abridged 5th ed. 1983). The term, “constructive notice” means “information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.” *Id.*

⁷ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d at 799.

⁸ Section 697.02, F.S.

⁹ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993). See also, 37 FLA. JUR.2D *Mortgages* s. 133 (2011).

¹⁰ Section 695.01(2), F.S.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL Section), liens assessed and maintained by a municipality or branch of a municipality often go undetected because:

- They are often unrecorded;
- Confusion often arises over determination of which branch of government has the right to impose the lien; and
- Confusion arises as to whom to contact to determine the existences of possible liens.¹¹

Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.¹² The state government may also file a notice of a lien on real property in some instances.¹³ A lien, in some cases, may be legally enforceable although it is not recorded in the public records of the county in which the property is located.¹⁴ This may be characterized as a “hidden lien” because the owner or other affected parties do not have actual notice and may not discover the existence of the lien through proper diligence by searching the public records in the county where the property is located.

III. Effect of Proposed Changes:

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid against a creditor or subsequent purchaser only if it is properly recorded in the county in which the property is located and meets additional requirements for the recorded notice of lien to identify the property. The recorded notice of lien must contain:

- the name of the owner of record,
- a description or address of the property, and
- the tax or parcel identification number applicable to the property as of the date of recording.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Government of Governmental Liens* (2009) (on file with the Senate Committee on Judiciary).

¹² See e.g., s. 162.09(3), F.S., which authorizes local governments to file a lien in the public records against land upon a valid order imposing a code enforcement fine.

¹³ See e.g., ss. 589.13, 589.14, 589.15, and 589.16, F.S.

¹⁴ See *Dade County v. Certain Lands*, 247 So. 2d 787, 789-90 (Fla. 3d DCA 1971).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The applicable filing fee for recording liens is outlined in s. 28.24, F.S.

B. Private Sector Impact:

The bill may have a positive impact on the private sector through greater certainty and notice of governmental liens. Committee staff does not have data specifying the number of governmental entities that are not currently recording all liens on real property or how many additional liens may be filed as a result of the requirements of the bill. Private parties that are buying and selling real property may benefit to the extent the bill provides additional information to such parties prior to entering into these transactions.

C. Government Sector Impact:

Committee staff does not have data specifying the number of governmental entities that are not recording all liens on real property that will be required to do so by the bill. Any additional costs associated with recording liens as required by the bill may be negated to the extent the governmental entities may more effectively enforce collection of such liens. To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

The Clerks of Court may experience increased revenue attributed to increased filings of liens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on January 19, 2012:

The committee substitute no longer revises requirements for holders of title under a quitclaim deed. The committee substitute revises requirements for the recorded notice of lien for certain liens to be valid against creditors or subsequent purchasers for valuable consideration.

- B. **Amendments:**

None.

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



181120

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) is added to section 695.01,
Florida Statutes, to read:

695.01 Conveyances and liens to be recorded.—

(3) A lien by a governmental entity or quasi-governmental
entity which attaches to real property for an improvement,
service, fine, or penalty, other than a lien for taxes, non-ad
valorem or special assessments, or utilities, is valid and
effectual against creditors and subsequent purchasers for a



181120

valuable consideration only if the lien is recorded in the
official records of the county in which the property is located.
The recorded notice of lien must contain the name of the owner
of record, a description or address of the property, and the tax
or parcel identification number applicable to the property as of
the date of recording.

Section 2. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to liens on real property; amending s.
695.01, F.S.; providing that a lien imposed on real
property by a governmental or quasi-governmental
entity for certain purposes, other than a lien for
taxes, non-ad valorem or special assessments, or
utilities, is not valid against a creditor or
subsequent purchasers unless the lien is recorded;
specifying the required contents of the recorded
notice of lien; providing an effective date.

By Senator Ring

32-00612-12

2012670__

A bill to be entitled

An act relating to real property; amending s. 695.01, F.S.; providing that a conveyance, transfer, or mortgage of real property, an interest in the real property, or a lease for a term of 1 year or longer is not valid against creditors or subsequent purchasers unless such documents are recorded in the official records; providing that a lien imposed on real property by a governmental or quasi-governmental entity for certain purposes is not valid against creditors or subsequent purchasers unless the lien is recorded and contains certain information; providing an effective date.

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

Section 1. Section 695.01, Florida Statutes, is amended to read:

695.01 Conveyances, mortgages, and liens to be recorded.—

(1) A ~~No~~ conveyance, transfer, or mortgage of real property, ~~an or of any interest in the real property therein, or a nor any~~ lease for a term of 1 year or longer ~~is not valid, shall be good and effectual~~ in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the conveyance, transfer, mortgage, interest, or lease is same be recorded in the official records of the county in which the property is located. according to law; ~~nor shall~~ Any such instrument made or executed by virtue of a any power of attorney is not valid be good or effectual in law

Page 1 of 2

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

32-00612-12

2012670__

or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney is be recorded in the official records of the county in which the property is located before the rights accruing of the right of creditors such creditor or subsequent purchasers accrue purchaser. The receipt of title under a quitclaim deed alone does not disqualify the grantee as a bona fide purchaser without notice within the meaning of the recording acts.

(2) A lien by a governmental entity or quasi-governmental entity which attaches to real property for an improvement, service, fine, or penalty is valid and effectual against creditors and subsequent purchasers for a valuable consideration only if the lien is recorded in the official records of the county in which the property is located. The recorded notice of lien must contain the name of the owner of record, a legally sufficient legal description of the property, and the tax or parcel identification number applicable to the property as of the date of assessment. Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.

Section 2. This act shall take effect July 1, 2012.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 19 / 2012

Meeting Date

Topic _____

Bill Number 670
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-12

Meeting Date

Topic _____

Bill Number 670
(if applicable)

Name Martha Edenfeld

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10095

Phone 850-222-3533

Street

Tallahassee FL 32302

City

State

Zip

E-mail martha@penningtonlaw.com

Speaking: ☐ For ☐ Against ☐ Information Support the bill

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

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

COMMITTEE: Judiciary
ITEM: SB 670
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 860

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Clerks of Court

DATE: January 20, 2012

REVISED: _____

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

Please see Section VIII. For Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Senate Bill 860 makes a number of changes relating to the clerks of the circuit courts. Specifically, the bill:

- Provides guidelines for managing electronic filing;
- Requires a clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order;
- Increases the threshold to \$10 from \$5 below which clerks are not required to make a refund of an overpayment without a written request;
- Limits the exemption from requirements for a state agency or entity to pay court-related fees to the state agency or entity and the party it is representing;
- Requires persons filing a written request to have their personal information exempt from disclosure under the public records statutes to specify the document type, name, identification number, and page number of the record that contains the exempt information;
- Authorizes the use of an electronic affidavit for proof of publication of a legal advertisement; and

- Provides that, following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

This bill substantially amends the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 50.041, 119.0714, and 197.542.

II. Present Situation:

Electronic Filings

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.¹ The clerk is also required to ensure that the papers do not leave the office without permission from the court.²

Clerk as County Recorder

Pursuant to statute, the clerk of the circuit court generally acts as the county recorder.³ Current law does not require a clerk to remove recorded court documents from the Official Records pursuant to a sealing or expunction order as part of his or her duties.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.⁴ If the amount of the overpayment is \$5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.⁵

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.⁶ State agencies are also exempt from all court-related fees and charges assessed by the clerks.⁷

Public Records

A clerk of court is a custodian of public records and is thus required to provide access and copies of public records, if the requesting party is entitled by law to view a given record. Certain records are exempt from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ Section 24.244, F.S.

⁵ *Id.*

⁶ Section 28.345, F.S.

⁷ *Id.*

attorneys, magistrates, and others as specified by statute.⁸ An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.⁹

Proof of Publication

Numerous statutes require the publication of legal notice for various actions.¹⁰ Generally, proof of such publication is made with a printed affidavit.¹¹

Sale at Public Auction

Tax lien certificates are issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.¹² A tax certificate is a lien against the real property that can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificate holder will receive the amount of their investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5 percent mandatory minimum interest, whichever is greater.¹³ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹⁴

When property is sold by the clerk of court at a public auction, the certificate holder has the right to bid. The high bidder must post a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁵ If full payment of the final bid is not made within 24 hours, the clerk cancels all bids, readvertises the sale, and pays all costs of the sale from the deposit.¹⁶ Any remaining funds must be applied toward the opening bid.¹⁷

III. Effect of Proposed Changes:

Senate Bill 860 makes a number of changes relating to the clerks of the circuit courts. These changes are described more specifically below.

⁸ Section 119.071(4)(d), F.S.

⁹ Section 119.071(4)(d)2., F.S.

¹⁰ See, e.g., s. 50.011, F.S.

¹¹ Sections 50.031 and 50.041(1), F.S.

¹² Section 197.102(1)(f), F.S.

¹³ Section 197.472, F.S.

¹⁴ *Id.*

¹⁵ Section 197.542(2), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

Electronic Filings

This bill amends s. 28.13, F.S., to address electronic filings. The bill specifically requires clerks to affix a stamp to submissions to the clerk's office indicating the date and time when it was filed. The bill also replaces a provision in current law which prohibits a clerk from allowing filed papers to be taken from the clerk's office with a requirement that the clerk ensure that documents are not removed from the control or custody of the clerk.

Clerk as County Recorder

This bill amends s. 28.222, F.S., to add a new subsection (4) requiring the clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Refunds

This bill amends s. 24.244, F.S., to increase the threshold to \$10 from \$5 below which clerks are not required to make a refund of an overpayment without a written request.

Fee Exemption

This bill amends s. 28.345, F.S. by adding a new subsection (2), limiting the exemption from requirements for a state agency or entity to pay court-related fees to the state agency or entity and the party it is representing.

Public Records

This bill amends s. 28.24, F.S., to specify that the term "copy of a public record" in reference to a record held by a clerk means a facsimile, replica, photograph, or other reproduction of a record.

The bill also amends s. 119.0714, F.S., to require that a person who submits a written request to make information exempt from public disclosure must specify the document type, name, identification number, and page number of the record that contains the exempt information.

Proof of Publication

This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit to prove publication of legal notices, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.¹⁸

Sale at Public Auction

This bill amends s. 197.542(2), F.S., to provide that if the property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written

¹⁸ Section 117.021, F.S., requires that when a document is notarized electronically, it contains an electronic signature that is unique to the notary public, capable of independent verification, retained under the notary public's sole control, and attached to or logically associated with the electronic document.

request in order to receive a refund of the deposit. Upon receipt of a written request, the clerk must refund the cash deposit in accordance with s. 197.182(1)(c), F.S.

Effective Date

This bill takes effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, this bill has no fiscal impact on the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on January 19, 2012

The Committee Substitute:

- Deletes an unnecessary cross-reference;
- Corrects a typographical error;
- Clarifies that an existing fee exemption will continue to apply to state agencies as well as other state entities;
- Removes the word “confidential” where it is inaccurate; and
- Corrects an erroneous cross-reference.

B. Amendments:

None.



492738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 28.13, Florida Statutes, is amended to
read:

28.13 ~~To keep~~ Papers and electronic filings.—The clerk of
the circuit court shall keep all papers and electronic filings
~~filed~~ in the clerk's office with the utmost care and security,
storing them in association with related case arranged in
appropriate files and affixing a stamp to the submission
indicating ~~(endorsing upon each~~ the date and time when the
submission same was filed. The clerk ~~), and~~ shall not permit any



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attorney or other person to remove documents, ~~take papers~~ once
filed, from the control or custody ~~out of the office~~ of the
clerk without leave of the court, except as otherwise is
~~hereinafter~~ provided by law.

Section 2. Subsections (4) through (6) of section 28.222,
Florida Statutes, are renumbered as subsections (5) through (7),
respectively, and a new subsection (4) is added to that section
to read:

28.222 Clerk to be county recorder.—

(4) The county recorder shall remove recorded court
documents from the Official Records pursuant to a sealing or
expunction order.

Section 3. Section 28.24, Florida Statutes, is amended to
read:

28.24 Service charges ~~by clerk of the circuit court.~~—The
clerk of the circuit court shall charge for services rendered by
the clerk's office in recording documents and instruments and in
performing the duties enumerated in amounts not to exceed those
specified in this section, except as provided in s. 28.345.

~~Notwithstanding any other provision of this section, the clerk~~
~~of the circuit court shall provide without charge to the state~~
~~attorney, public defender, guardian ad litem, public guardian,~~
~~attorney ad litem, criminal conflict and civil regional counsel,~~
~~and private court-appointed counsel paid by the state, and to~~
~~the authorized staff acting on behalf of each, access to and a~~
~~copy of any public record, if the requesting party is entitled~~
~~by law to view the exempt or confidential record, as maintained~~
~~by and in the custody of the clerk of the circuit court as~~
~~provided in general law and the Florida Rules of Judicial~~



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~~Administration. The clerk of the circuit court may provide the requested public record in an electronic format in lieu of a paper format when capable of being accessed by the requesting entity.~~

Charges

(1) For examining, comparing, correcting, verifying, and certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page.....5.00

(2) For preparing, numbering, and indexing an original record of appellate proceedings, per instrument.....3.50

(3) For certifying copies of any instrument in the public records.....2.00

(4) For verifying any instrument presented for certification prepared by someone other than clerk, per page.3.50

(5) (a) For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8 1/2 inches, per page.....1.00

(b) For making copies by photographic process of any instrument in the public records of more than 14 inches by 8 1/2 inches, per page.....5.00

(6) For making microfilm copies of any public records:

(a) 16 mm 100' microfilm roll.....42.00

(b) 35 mm 100' microfilm roll.....60.00

(c) Microfiche, per fiche.....3.50

(7) For copying any instrument in the public records by other than photographic process, per page.....6.00



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(8) For writing any paper other than herein specifically mentioned, same as for copying, including signing and sealing 7.00

(9) For indexing each entry not recorded.....1.00

(10) For receiving money into the registry of court:

(a) 1. First \$500, percent.....3

2. Each subsequent \$100, percent.....1.5

(b) Eminent domain actions, per deposit.....170.00

(11) For examining, certifying, and recording plats and for recording condominium exhibits larger than 14 inches by 8 1/2 inches:

(a) First page.....30.00

(b) Each additional page.....15.00

(12) For recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches, including required notice to property appraiser where applicable:

(a) First page or fraction thereof.....5.00

(b) Each additional page or fraction thereof.....4.00

(c) For indexing instruments recorded in the official records which contain more than four names, per additional name 1.00

(d) An additional service charge shall be paid to the clerk of the circuit court to be deposited in the Public Records Modernization Trust Fund for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records:

1. First page.....1.00

2. Each additional page.....0.50

Said fund shall be held in trust by the clerk and used exclusively for equipment and maintenance of equipment,



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personnel training, and technical assistance in modernizing the public records system of the office. In a county where the duty of maintaining official records exists in an office other than the office of the clerk of the circuit court, the clerk of the circuit court is entitled to 25 percent of the moneys deposited into the trust fund for equipment, maintenance of equipment, training, and technical assistance in modernizing the system for storing records in the office of the clerk of the circuit court. The fund may not be used for the payment of travel expenses, membership dues, bank charges, staff-recruitment costs, salaries or benefits of employees, construction costs, general operating expenses, or other costs not directly related to obtaining and maintaining equipment for public records systems or for the purchase of furniture or office supplies and equipment not related to the storage of records. On or before December 1, 1995, and on or before December 1 of each year immediately preceding each year during which the trust fund is scheduled for legislative review under s. 19(f)(2), Art. III of the State Constitution, each clerk of the circuit court shall file a report on the Public Records Modernization Trust Fund with the President of the Senate and the Speaker of the House of Representatives. The report must itemize each expenditure made from the trust fund since the last report was filed; each obligation payable from the trust fund on that date; and the percentage of funds expended for each of the following: equipment, maintenance of equipment, personnel training, and technical assistance. The report must indicate the nature of the system each clerk uses to store, maintain, and retrieve public records and the degree to which the system has been upgraded



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since the creation of the trust fund.

(e) An additional service charge of \$4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records. From the additional \$4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to the Florida Association of Court Clerks and Comptroller, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System, in which system all clerks shall participate on or before January 1, 2006; \$1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall be distributed to the board of county commissioners to be used exclusively to fund court-related technology, and court technology needs as defined in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, public defender, and criminal conflict and civil regional counsel in that county. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided herein for the court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida,



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including any records generated as part of the Comprehensive Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, shall not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

2. If the state becomes legally responsible for the costs of court-related technology needs as defined in s. 29.008(1)(f)2. and (h), whether by operation of general law or by court order, \$4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(13) Oath, administering, attesting, and sealing, not otherwise provided for herein.....3.50

(14) For validating certificates, any authorized bonds, each.....3.50

(15) For preparing affidavit of domicile.....5.00

(16) For exemplified certificates, including signing and sealing.....7.00

(17) For authenticated certificates, including signing and sealing.....7.00



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(18) (a) For issuing and filing a subpoena for a witness,
not otherwise provided for herein (includes writing, preparing,
signing, and sealing).....7.00
(b) For signing and sealing only.....2.00
(19) For approving bond.....8.50
(20) For searching of records, for each year's search...2.00
(21) For processing an application for a tax deed sale
(includes application, sale, issuance, and preparation of tax
deed, and disbursement of proceeds of sale), other than excess
proceeds.....60.00
(22) For disbursement of excess proceeds of tax deed sale,
first \$100 or fraction thereof.....10.00
(23) Upon receipt of an application for a marriage license,
for preparing and administering of oath; issuing, sealing, and
recording of the marriage license; and providing a certified
copy.....30.00
(24) For solemnizing matrimony.....30.00
(25) For sealing any court file or expungement of any
record.....42.00
(26) (a) For receiving and disbursing all restitution
payments, per payment.....3.50
(b) For receiving and disbursing all partial payments,
other than restitution payments, for which an administrative
processing service charge is not imposed pursuant to s. 28.246,
per month.....5.00
(c) For setting up a payment plan, a one-time
administrative processing charge in lieu of a per month charge
under paragraph (b).....25.00
(27) Postal charges incurred by the clerk of the circuit



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217 court in any mailing by certified or registered mail shall be
218 paid by the party at whose instance the mailing is made.

219 (28) For furnishing an electronic copy of information
220 contained in a computer database: a fee as provided for in
221 chapter 119.

222 Section 4. Section 28.244, Florida Statutes, is amended to
223 read:

224 28.244 Refunds.—A clerk of the circuit court or a filing
225 officer of another office where records are filed who receives
226 payment for services provided and thereafter determines that an
227 overpayment has occurred shall refund to the person who made the
228 payment the amount of any overpayment that exceeds \$10 ~~\$5~~. If
229 the amount of the overpayment is \$10 ~~\$5~~ or less, the clerk of
230 the circuit court or a filing officer of another office where
231 records are filed is not required to refund the amount of the
232 overpayment unless the person who made the overpayment makes a
233 written request.

234 Section 5. Section 28.345, Florida Statutes, is amended to
235 read:

236 28.345 State access to records; exemption from court-
237 related fees and charges.—

238 (1) Notwithstanding any other provision of law to the
239 contrary, the clerk of the circuit court shall provide without
240 charge to the state attorney, public defender, guardian ad
241 litem, public guardian, attorney ad litem, criminal conflict and
242 civil regional counsel, and private court-appointed counsel paid
243 by the state, and to the authorized staff acting on behalf of
244 each, access to and a copy of any public record. If the public
245 record is exempt or confidential, the requesting party is only



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entitled by law to view or copy the exempt or confidential record if authority is provided in general law or the Florida Rules of Judicial Administration. The clerk of the circuit court may provide the requested public record in an electronic format in lieu of a paper format when the requesting entity is capable of accessing it in an electronic format. For purposes of this subsection, the term "copy of a public record" means any facsimile, replica, photograph, or other reproduction of a record.

(2) Notwithstanding any other ~~provision of this chapter or~~ law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, ~~and~~ public defenders, and state agencies, while acting in their official capacity, ~~and state agencies,~~ are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

(3) The exemptions provided in subsections (1) and (2) apply only to state agencies and state entities and the party that an agency or entity is representing. The clerk of court shall collect the filing fees and services charges as required in this chapter from all other parties.

Section 6. Subsection (2) of section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(2) Each such affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall



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be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, each such affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

Section 7. Subsections (2) and (3) of section 119.0714, Florida Statutes, are amended to read:

119.0714 Court files; court records; official records.—

(2) COURT RECORDS.—

(a)1. Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

2.~~(b)~~ A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

3.~~(c)~~ A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

4.~~(d)~~ The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account,



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debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.

5.a.(e)1. On January 1, 2012, and thereafter, the clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

b.2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(b) A request for maintenance of a public record exemption in s. 119.071(4)(d)1. made pursuant to s. 119.071(4)(d)2. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(3) OFFICIAL RECORDS.—

(a)1. Any person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

2.a.(b)1. If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

b.2. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in subparagraph 8. paragraph (h), to



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keep social security numbers confidential and exempt as provided for in s. 119.071(5) (a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5) (b), without any person having to request redaction.

~~c.3.~~ Section 119.071(5) (a) 7. and 8. does not apply to the county recorder with respect to official records.

~~3.(e)~~ The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

~~4.(d)~~ A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

~~5.(e)~~ The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

~~6.(f)~~ A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

~~7.(g)~~ A county recorder shall immediately and conspicuously



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post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

a.1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

b.2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

8.(h) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an



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automated program for redaction shall be deemed to be the best effort in performing the redaction and shall be deemed in compliance with the requirements of this subsection.

9.-(i) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(b) A request for maintenance of a public record exemption in s. 119.071(4)(d)1. made pursuant to s. 119.071(4)(d)2. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

Section 8. Subsection (2) of section 197.542, Florida Statutes, is amended to read:

197.542 Sale at public auction.—

(2) The certificateholder has the right to bid as others present may bid, and the property shall be struck off and sold to the highest bidder. The high bidder shall post with the clerk a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, at the time of the sale, to be applied to the sale price at the time of full payment. Notice of the deposit requirement must be posted at the auction site, and the clerk may require bidders to show their willingness and ability to post the deposit. If full payment of the final bid and of documentary stamp tax and recording fees is not made within 24 hours, excluding weekends and legal holidays, the clerk shall cancel all bids, readvertise the sale as provided in this section, and pay all costs of the sale from the deposit. Any remaining funds must be applied toward the opening bid. If the property is redeemed prior to the clerk receiving full payment



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for the issuance of a tax deed, in order to receive a refund of the deposit described in this subsection, the high bidder must submit a request for such refund in writing to the clerk. Upon receipt of the refund request, the clerk shall refund the cash deposit. The clerk may refuse to recognize the bid of any person who has previously bid and refused, for any reason, to honor such bid.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to clerks of court; amending s. 28.13, F.S.; providing requirements for storage of electronic filings; requiring papers and electronic filings to be electronically time stamped; amending s. 28.222, F.S.; authorizing the clerk to remove sealed or expunged court records from the Official Records; amending s. 28.24, F.S.; revising language concerning an exemption from charges for services provided to specified officials and their staffs; amending s. 28.244, F.S.; increasing the threshold amount for automatic repayment of overpayments; amending s. 28.345, F.S.; providing for access to clerks' files by state agencies and an exemption from copying fees and charges; limiting the application of an exemption from payment of fees and charges assessed by clerks of



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449 circuit courts to official use; amending s. 50.041,
450 F.S.; authorizing the use of electronic proof of
451 publication affidavits; amending s. 119.0714, F.S.;
452 requiring certain persons to provide specific
453 information to the clerk to maintain the public
454 records exemption status of certain information under
455 specified provisions; amending s. 197.542, F.S.;
456 authorizing the clerk to issue a refund to the
457 depositor for redeemed property subject to a tax sale;
458 providing an effective date.

By Senator Wise

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A bill to be entitled

An act relating to clerks of court; amending s. 28.13, F.S.; providing requirements for storage of electronic filings; requiring papers and electronic filings to be electronically time stamped; amending s. 28.222, F.S.; authorizing the clerk to remove sealed or expunged court records from the Official Records; amending s. 28.24, F.S.; clarifying provisions concerning free copies of records to specified officials and their staffs; defining the term "copy of a public record" for specified purposes; amending s. 28.244, F.S.; increasing the threshold amount for automatic repayment of overpayments; amending s. 28.345, F.S.; clarifying the application of an exemption from payment of fees and charges assessed by clerks of circuit courts; amending s. 50.041, F.S.; authorizing the use of electronic proof of publication affidavits; amending s. 119.071, F.S.; requiring certain persons to provide specific information to the clerk to maintain the public records exemption status of certain information; amending s. 197.542, F.S.; authorizing the clerk to issue a refund to the depositor for redeemed property subject to a tax sale; providing an effective date.

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

Section 1. Section 28.13, Florida Statutes, is amended to read:

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

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28.13 ~~To keep~~ Papers and electronic filings.—The clerk of the circuit court shall keep all papers and electronic filings ~~filed~~ in the clerk's office with the utmost care and security, storing them in association with related case arranged in appropriate files and affixing a stamp to the submission indicating ~~(endoring upon each~~ the date and time when the submission same was filed. The clerk), and shall not permit any attorney or other person to remove documents, take papers once filed, from the control or custody out of the office of the clerk without leave of the court, except as otherwise is ~~hereinafter~~ provided by law.

Section 2. Subsections (4) through (6) of section 28.222, Florida Statutes, are renumbered as subsections (5) through (7), respectively, and a new subsection (4) is added to that section to read:

28.222 Clerk to be county recorder.—

(4) The county recorder shall remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Section 3. Section 28.24, Florida Statutes, is amended to read:

28.24 Service charges ~~by clerk of the circuit court.~~—The clerk of the circuit court shall charge for services rendered by the clerk's office in recording documents and instruments and in performing the duties enumerated in amounts not to exceed those specified in this section. Notwithstanding any other provision of this section, the clerk of the circuit court shall provide without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict

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

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 59 and civil regional counsel, and private court-appointed counsel
 60 paid by the state, and to the authorized staff acting on behalf
 61 of each, access to and a copy of any public record as provided
 62 in s. 28.345, if the requesting party is entitled by law to view
 63 the exempt or confidential record, as maintained by and in the
 64 custody of the clerk of the circuit court as provided in general
 65 law and the Florida Rules of Judicial Administration. The clerk
 66 of the circuit court may provide the requested public record in
 67 an electronic format in lieu of a paper format when capable of
 68 being accessed by the requesting entity. For purposes of this
 69 section, the term "copy of public a record" means any facsimile,
 70 replica, photograph, or other reproduction of a record.

Charges

(1) For examining, comparing, correcting, verifying, and
 certifying transcripts of record in appellate proceedings,
 prepared by attorney for appellant or someone else other than
 clerk, per page.....5.00
 (2) For preparing, numbering, and indexing an original
 record of appellate proceedings, per instrument.....3.50
 (3) For certifying copies of any instrument in the public
 records.....2.00
 (4) For verifying any instrument presented for
 certification prepared by someone other than clerk, per page.3.50
 (5) (a) For making copies by photographic process of any
 instrument in the public records consisting of pages of not more
 than 14 inches by 8 1/2 inches, per page.....1.00
 (b) For making copies by photographic process of any

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 88 instrument in the public records of more than 14 inches by 8 1/2
 89 inches, per page.....5.00
 90 (6) For making microfilm copies of any public records:
 91 (a) 16 mm 100' microfilm roll.....42.00
 92 (b) 35 mm 100' microfilm roll.....60.00
 93 (c) Microfiche, per fiche.....3.50
 94 (7) For copying any instrument in the public records by
 95 other than photographic process, per page.....6.00
 96 (8) For writing any paper other than herein specifically
 97 mentioned, same as for copying, including signing and sealing7.00
 98 (9) For indexing each entry not recorded.....1.00
 99 (10) For receiving money into the registry of court:
 100 (a)1. First \$500, percent.....3
 101 2. Each subsequent \$100, percent.....1.5
 102 (b) Eminent domain actions, per deposit.....170.00
 103 (11) For examining, certifying, and recording plats and for
 104 recording condominium exhibits larger than 14 inches by 8 1/2
 105 inches:
 106 (a) First page.....30.00
 107 (b) Each additional page.....15.00
 108 (12) For recording, indexing, and filing any instrument not
 109 more than 14 inches by 8 1/2 inches, including required notice
 110 to property appraiser where applicable:
 111 (a) First page or fraction thereof.....5.00
 112 (b) Each additional page or fraction thereof.....4.00
 113 (c) For indexing instruments recorded in the official
 114 records which contain more than four names, per additional name1.00
 115 (d) An additional service charge shall be paid to the clerk
 116 of the circuit court to be deposited in the Public Records

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117 Modernization Trust Fund for each instrument listed in s.
 118 28.222, except judgments received from the courts and notices of
 119 lis pendens, recorded in the official records:
 120 1. First page.....1.00
 121 2. Each additional page.....0.50
 122

123 Said fund shall be held in trust by the clerk and used
 124 exclusively for equipment and maintenance of equipment,
 125 personnel training, and technical assistance in modernizing the
 126 public records system of the office. In a county where the duty
 127 of maintaining official records exists in an office other than
 128 the office of the clerk of the circuit court, the clerk of the
 129 circuit court is entitled to 25 percent of the moneys deposited
 130 into the trust fund for equipment, maintenance of equipment,
 131 training, and technical assistance in modernizing the system for
 132 storing records in the office of the clerk of the circuit court.
 133 The fund may not be used for the payment of travel expenses,
 134 membership dues, bank charges, staff-recruitment costs, salaries
 135 or benefits of employees, construction costs, general operating
 136 expenses, or other costs not directly related to obtaining and
 137 maintaining equipment for public records systems or for the
 138 purchase of furniture or office supplies and equipment not
 139 related to the storage of records. On or before December 1,
 140 1995, and on or before December 1 of each year immediately
 141 preceding each year during which the trust fund is scheduled for
 142 legislative review under s. 19(f)(2), Art. III of the State
 143 Constitution, each clerk of the circuit court shall file a
 144 report on the Public Records Modernization Trust Fund with the
 145 President of the Senate and the Speaker of the House of

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146 Representatives. The report must itemize each expenditure made
 147 from the trust fund since the last report was filed; each
 148 obligation payable from the trust fund on that date; and the
 149 percentage of funds expended for each of the following:
 150 equipment, maintenance of equipment, personnel training, and
 151 technical assistance. The report must indicate the nature of the
 152 system each clerk uses to store, maintain, and retrieve public
 153 records and the degree to which the system has been upgraded
 154 since the creation of the trust fund.
 155 (e) An additional service charge of \$4 per page shall be
 156 paid to the clerk of the circuit court for each instrument
 157 listed in s. 28.222, except judgments received from the courts
 158 and notices of lis pendens, recorded in the official records.
 159 From the additional \$4 service charge collected:
 160 1. If the counties maintain legal responsibility for the
 161 costs of the court-related technology needs as defined in s.
 162 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
 163 Florida Association of Court Clerks and Comptroller, Inc., for
 164 the cost of development, implementation, operation, and
 165 maintenance of the clerks' Comprehensive Case Information
 166 System, in which system all clerks shall participate on or
 167 before January 1, 2006; \$1.90 shall be retained by the clerk to
 168 be deposited in the Public Records Modernization Trust Fund and
 169 used exclusively for funding court-related technology needs of
 170 the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall
 171 be distributed to the board of county commissioners to be used
 172 exclusively to fund court-related technology, and court
 173 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
 174 state trial courts, state attorney, public defender, and

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 175 criminal conflict and civil regional counsel in that county. If
 176 the counties maintain legal responsibility for the costs of the
 177 court-related technology needs as defined in s. 29.008(1)(f)2.
 178 and (h), notwithstanding any other provision of law, the county
 179 is not required to provide additional funding beyond that
 180 provided herein for the court-related technology needs of the
 181 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
 182 and official records are the property of the State of Florida,
 183 including any records generated as part of the Comprehensive
 184 Case Information System funded pursuant to this paragraph and
 185 the clerk of court is designated as the custodian of such
 186 records, except in a county where the duty of maintaining
 187 official records exists in a county office other than the clerk
 188 of court or comptroller, such county office is designated the
 189 custodian of all official records, and the clerk of court is
 190 designated the custodian of all court records. The clerk of
 191 court or any entity acting on behalf of the clerk of court,
 192 including an association, shall not charge a fee to any agency
 193 as defined in s. 119.011, the Legislature, or the State Court
 194 System for copies of records generated by the Comprehensive Case
 195 Information System or held by the clerk of court or any entity
 196 acting on behalf of the clerk of court, including an
 197 association.

198 2. If the state becomes legally responsible for the costs
 199 of court-related technology needs as defined in s.
 200 29.008(1)(f)2. and (h), whether by operation of general law or
 201 by court order, \$4 shall be remitted to the Department of
 202 Revenue for deposit into the General Revenue Fund.

203 (13) Oath, administering, attesting, and sealing, not

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 204 otherwise provided for herein.....3.50
 205 (14) For validating certificates, any authorized bonds,
 206 each.....3.50
 207 (15) For preparing affidavit of domicile.....5.00
 208 (16) For exemplified certificates, including signing and
 209 sealing.....7.00
 210 (17) For authenticated certificates, including signing and
 211 sealing.....7.00
 212 (18) (a) For issuing and filing a subpoena for a witness,
 213 not otherwise provided for herein (includes writing, preparing,
 214 signing, and sealing).....7.00
 215 (b) For signing and sealing only.....2.00
 216 (19) For approving bond.....8.50
 217 (20) For searching of records, for each year's search...2.00
 218 (21) For processing an application for a tax deed sale
 219 (includes application, sale, issuance, and preparation of tax
 220 deed, and disbursement of proceeds of sale), other than excess
 221 proceeds.....60.00
 222 (22) For disbursement of excess proceeds of tax deed sale,
 223 first \$100 or fraction thereof.....10.00
 224 (23) Upon receipt of an application for a marriage license,
 225 for preparing and administering of oath; issuing, sealing, and
 226 recording of the marriage license; and providing a certified
 227 copy.....30.00
 228 (24) For solemnizing matrimony.....30.00
 229 (25) For sealing any court file or expungement of any
 230 record.....42.00
 231 (26) (a) For receiving and disbursing all restitution
 232 payments, per payment.....3.50

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233 (b) For receiving and disbursing all partial payments,
 234 other than restitution payments, for which an administrative
 235 processing service charge is not imposed pursuant to s. 28.246,
 236 per month.....5.00

237 (c) For setting up a payment plan, a one-time
 238 administrative processing charge in lieu of a per month charge
 239 under paragraph (b).....25.00

240 (27) Postal charges incurred by the clerk of the circuit
 241 court in any mailing by certified or registered mail shall be
 242 paid by the party at whose instance the mailing is made.

243 (28) For furnishing an electronic copy of information
 244 contained in a computer database: a fee as provided for in
 245 chapter 119.

246 Section 4. Section 28.244, Florida Statutes, is amended to
 247 read:

248 28.244 Refunds.—A clerk of the circuit court or a filing
 249 officer of another office where records are filed who receives
 250 payment for services provided and thereafter determines that an
 251 overpayment has occurred shall refund to the person who made the
 252 payment the amount of any overpayment that exceeds \$10 ~~\$5~~. If
 253 the amount of the overpayment is \$10 ~~\$5~~ or less, the clerk of
 254 the circuit court or a filing officer of another office where
 255 records are filed is not required to refund the amount of the
 256 overpayment unless the person who made the overpayment makes a
 257 written request.

258 Section 5. Section 28.345, Florida Statutes, is amended to
 259 read:

260 28.345 Exemption from court-related fees and charges.—
 261 (1) Notwithstanding any other ~~provision of this chapter or~~

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262 law to the contrary, judges and those court staff acting on
 263 behalf of judges, state attorneys, guardians ad litem, public
 264 guardians, attorneys ad litem, court-appointed private counsel,
 265 criminal conflict and civil regional counsel, and public
 266 defenders, acting in their official capacity, and state
 267 agencies, are exempt from all court-related fees and charges
 268 assessed by the clerks of the circuit courts.

269 (2) The exemption provided in subsection (1) for state
 270 agencies applies only to the state agency and the party it is
 271 representing. The clerk of court shall collect the filing fees
 272 and services charges as required in this chapter from all other
 273 parties.

274 Section 6. Subsection (2) of section 50.041, Florida
 275 Statutes, is amended to read:

276 50.041 Proof of publication; uniform affidavits required.—
 277 (2) Each such affidavit shall be printed upon white bond
 278 paper containing at least 25 percent rag material and shall be 8
 279 1/2 inches in width and of convenient length, not less than 5
 280 1/2 inches. A white margin of not less than 2 1/2 inches shall
 281 be left at the right side of each affidavit form and upon or in
 282 this space shall be substantially pasted a clipping which shall
 283 be a true copy of the public notice or legal advertisement for
 284 which proof is executed. Alternatively, each such affidavit may
 285 be provided in electronic rather than paper form, provided the
 286 notarization of the affidavit complies with the requirements of
 287 s. 117.021.

288 Section 7. Paragraph (d) of subsection (4) of section
 289 119.071, Florida Statutes, is amended to read:

290 119.071 General exemptions from inspection or copying of

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291 public records.—

292 (4) AGENCY PERSONNEL INFORMATION.—

293 (d)1.a. The home addresses, telephone numbers, social
294 security numbers, and photographs of active or former law
295 enforcement personnel, including correctional and correctional
296 probation officers, personnel of the Department of Children and
297 Family Services whose duties include the investigation of abuse,
298 neglect, exploitation, fraud, theft, or other criminal
299 activities, personnel of the Department of Health whose duties
300 are to support the investigation of child abuse or neglect, and
301 personnel of the Department of Revenue or local governments
302 whose responsibilities include revenue collection and
303 enforcement or child support enforcement; the home addresses,
304 telephone numbers, social security numbers, photographs, and
305 places of employment of the spouses and children of such
306 personnel; and the names and locations of schools and day care
307 facilities attended by the children of such personnel are exempt
308 from s. 119.07(1).

309 b. The home addresses, telephone numbers, and photographs
310 of firefighters certified in compliance with s. 633.35; the home
311 addresses, telephone numbers, photographs, and places of
312 employment of the spouses and children of such firefighters; and
313 the names and locations of schools and day care facilities
314 attended by the children of such firefighters are exempt from s.
315 119.07(1).

316 c. The home addresses and telephone numbers of justices of
317 the Supreme Court, district court of appeal judges, circuit
318 court judges, and county court judges; the home addresses,
319 telephone numbers, and places of employment of the spouses and

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320 children of justices and judges; and the names and locations of
321 schools and day care facilities attended by the children of
322 justices and judges are exempt from s. 119.07(1).

323 d. The home addresses, telephone numbers, social security
324 numbers, and photographs of current or former state attorneys,
325 assistant state attorneys, statewide prosecutors, or assistant
326 statewide prosecutors; the home addresses, telephone numbers,
327 social security numbers, photographs, and places of employment
328 of the spouses and children of current or former state
329 attorneys, assistant state attorneys, statewide prosecutors, or
330 assistant statewide prosecutors; and the names and locations of
331 schools and day care facilities attended by the children of
332 current or former state attorneys, assistant state attorneys,
333 statewide prosecutors, or assistant statewide prosecutors are
334 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
335 Constitution.

336 e. The home addresses and telephone numbers of general
337 magistrates, special magistrates, judges of compensation claims,
338 administrative law judges of the Division of Administrative
339 Hearings, and child support enforcement hearing officers; the
340 home addresses, telephone numbers, and places of employment of
341 the spouses and children of general magistrates, special
342 magistrates, judges of compensation claims, administrative law
343 judges of the Division of Administrative Hearings, and child
344 support enforcement hearing officers; and the names and
345 locations of schools and day care facilities attended by the
346 children of general magistrates, special magistrates, judges of
347 compensation claims, administrative law judges of the Division
348 of Administrative Hearings, and child support enforcement

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hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, and places of employment of the

5-00606-12

2012860

spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the

5-00606-12

2012860

Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of such schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

2. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. The request must specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information.

5-00606-12

2012860

Section 8. Subsection (2) of section 197.542, Florida Statutes, is amended to read:

197.542 Sale at public auction.—

(2) The certificateholder has the right to bid as others present may bid, and the property shall be struck off and sold to the highest bidder. The high bidder shall post with the clerk a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, at the time of the sale, to be applied to the sale price at the time of full payment. Notice of the deposit requirement must be posted at the auction site, and the clerk may require bidders to show their willingness and ability to post the deposit. If full payment of the final bid and of documentary stamp tax and recording fees is not made within 24 hours, excluding weekends and legal holidays, the clerk shall cancel all bids, readvertise the sale as provided in this section, and pay all costs of the sale from the deposit. Any remaining funds must be applied toward the opening bid. If the property is redeemed prior to the clerk receiving full payment for the issuance of a tax deed, in order to receive a refund of the deposit described in this subsection, the high bidder must submit a request for such refund in writing to the clerk. Upon receipt of the refund request, the clerk shall refund the cash deposit consistent with s. 197.182(1)(c). The clerk may refuse to recognize the bid of any person who has previously bid and refused, for any reason, to honor such bid.

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

COMMITTEE: Judiciary
ITEM: SB 860
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

COMMITTEE: Judiciary
ITEM: SB 860
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
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WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 882

INTRODUCER: Senator Dean

SUBJECT: Court Costs

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill repeals a statute that prohibits the Supreme Court from charging a losing party in the Supreme Court for copies of the record which have not been ordered by the party or his or her attorney.

This bill repeals section 57.101, Florida Statutes.

II. Present Situation:

Chapter 57, F.S., outlines the statutory requirements relating to the taxation of fees and costs accruing in legal actions before Florida courts. Generally, the clerk or the judge will tax the costs in favor of the prevailing party when the action is determined.¹ While it is a judicial function requiring adjudication to determine which party has the right to recover costs and in what amount, the clerical act of assessing costs may be performed by the court clerk.² The Florida Rules of Appellate Procedure list taxable costs as including:

- (1) fees for filing and service of process;
- (2) charges for preparation of the record;
- (3) bond premiums; and
- (4) other costs permitted by law.³

¹ Section 57.021, F.S.

² *Omohundro v. Wilkins*, 114 So. 502 (Fla. 1927); *Parker v. Dekle*, 35 So. 4 (Fla. 1903).

³ Fla. R. App. P. 9.400 (Costs and Attorneys' Fees).

Section 57.101, F.S., was first enacted in 1861.⁴ In its original context, the law prohibited the Clerk of the Supreme Court from charging a losing party for copies that the Clerk was required to provide to the Attorney General.⁵ That context has been lost in the subsequent shuffling of provisions of the Florida Statutes.

Today, the statute simply provides that a person may not be charged a fee for something the person did not order or request.⁶ Unless the copies have been ordered by the party or his or her attorney, costs of copies of the record of any paper on file in the Supreme Court shall not be taxed as costs against the losing party.⁷

III. Effect of Proposed Changes:

The bill repeals s. 57.101, F.S., which specifies that the “costs of copies of the record of any paper on file in the Supreme Court shall not be taxed as costs against the losing party unless the copies have been ordered by the party or his or her attorney.”

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁴ Chapter 1137, s. 5, Laws of Fla. (1861).

⁵ *Id.*

⁶ Section 57.101, F.S. (2011).

⁷ *Id.*

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect any additional revenues or expenditures for the Judiciary as a result of this bill.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

⁸ Office of the State Courts Administrator, 2012 Judicial Impact Statement for SB 882 (Dec. 8, 2011) (on file with the Senate Committee on Judiciary).

By Senator Dean

3-00832-12

2012882__

1 A bill to be entitled
2 An act relating to court costs; repealing s. 57.101,
3 F.S., which prohibits the Supreme Court from taxing
4 the costs of copies of records against the losing
5 party under certain circumstances; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 57.101, Florida Statutes, is repealed.
11 Section 2. This act shall take effect July 1, 2012.

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 882
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
X		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5 Yea	0 Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 858

INTRODUCER: Senator Negron and Others

SUBJECT: Knowingly and Willfully Giving False Information to a Law Enforcement Officer

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	O'Connor	Cibula	JU	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 858 implements the recommendation of the Senate Select Committee on Protecting Florida's Children to amend s. 837.055, F.S., which currently makes it a first-degree misdemeanor to knowingly and willfully provide false information to a law enforcement officer during a missing person or felony criminal investigation. Specifically, the bill creates a third-degree felony offense for knowingly and willfully providing false information with the intent to mislead or impede a law enforcement officer in a missing person investigation involving a child 16 years of age or younger, and such child suffers great bodily harm, permanent disability, permanent disfigurement, or death.

This bill substantially amends s. 837.055 of the Florida Statutes.

II. Present Situation

Senate Bill 858 is a consensus product by the Senate Select Committee on Protecting Florida's Children which was created by President Haridopolos on August 10, 2011, in the wake of the Casey Anthony verdict.¹ The committee was charged with examining the various policy options

¹ Caylee Anthony was almost three years old when last seen alive on June 16th, 2008 at the Anthony residence. She was reported missing by her grandmother on July 15, 2008. Casey Anthony, the mother of Caylee, was indicted on charges of first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to law enforcement and she pled not guilty. Caylee's skeletal remains were located in a wooded area near the family residence on December 11, 2008. On July 5, 2011, the jury found Casey Anthony not guilty of murder, aggravated child abuse, and aggravated manslaughter of a child, but guilty of four counts of providing false information to a law enforcement officer. Anthony received a sentence of one year in jail and a \$1,000 fine for each count.

to further advance the protection of children and determine whether changes to current law were needed.

The committee identified the relevant laws on child abuse and providing false information in missing children investigations. The committee examined ch. 827, F.S., relating to the abuse of children, s. 406.12, F.S., relating to the duty to report a death, and s. 837.055, F.S., relating to knowingly giving false information to a law enforcement officer during a missing person investigation. Particular attention was given to ss. 827.03 and 837.055, F.S., and their relationship to the circumstances in the Anthony case.²

Section 827.03, F.S., relates to the abuse, aggravated abuse, and neglect of children. Child abuse is defined as intentionally inflicting physical or mental injury on a child, committing an intentional act reasonably expected to result in physical or mental injury to a child, or actively encouraging the commission of an act resulting in physical or mental injury to a child. It is a third-degree felony offense to knowingly or willfully abuse a child without causing great bodily harm, permanent disability, or permanent disfigurement.³

Aggravated child abuse is defined as committing aggravated battery on a child; willfully torturing, maliciously punishing, or willfully and unlawfully caging a child; or knowingly or willfully abusing a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement. It is a first-degree felony to commit aggravated child abuse.⁴

Neglect is defined as a caregiver's failure or omission to provide a child with care, supervision, and services necessary to maintain the child's physical and mental health that a prudent person would consider essential for the well-being of the child; or a caregiver's failure to make reasonable efforts to protect a child from abuse, neglect, or exploitation by another person.⁵ It is a second-degree felony to willfully or by culpable negligence neglect a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.⁶ It is a third-degree felony to willfully or by culpable negligence neglect a child without causing any great bodily harm, permanent disability, or permanent disfigurement.⁷

Section 837.055, F.S., criminalizes providing false information to a law enforcement officer during a missing person investigation. The law states that "[w]hoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree."⁸

After reviewing these laws and receiving testimony from child abuse officials, law enforcement entities, prosecutors, and defense counsel, the committee recommended the creation of a third-

² See Select Committee on Protecting Florida's Children, <http://www.flsenate.gov/Committees/Show/SPFC> (last visited Jan. 13, 2012).

³ Section 827.03(1), F.S.

⁴ Section 827.03(2), F.S.

⁵ Section 827.03(3)(a), F.S.

⁶ Section 827.03(3)(b), F.S.

⁷ Section 827.03(3)(c), F.S.

⁸ Section 837.055(1), F.S.

degree felony offense for persons who knowingly and willfully provide false information to law enforcement with the intent to mislead or impede a missing child investigation when the child is 16 years of age or younger and suffers great bodily harm or death.

III. Effect of Proposed Changes:

Senate Bill 858 implements the recommendation of the Senate Select Committee on Protecting Florida's Children by amending s. 837.055, F.S., to create a third-degree felony offense for persons who knowingly and willfully provide false information with the intent to mislead or impede a law enforcement officer in a missing person investigation involving a child 16 years of age or younger, and such child suffers great bodily harm, permanent disability, permanent disfigurement, or death. The current first-degree misdemeanor offense will remain applicable in all other missing person or felony criminal investigations, provided the requisite criminal elements for that offense exist.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons found guilty of the newly created third-degree felony offense will be subject to a potential fine of up to \$5,000⁹ rather than potentially up to \$1,000¹⁰ (currently applicable in a first-degree misdemeanor case). Similarly, such persons will be subject to an increase in potential imprisonment of up to five years in prison for the felony offense,¹¹ rather than potentially up to one year in county jail for the misdemeanor offense.¹²

⁹ Section 775.083(1)(c), F.S.

¹⁰ Section 775.083(1)(d), F.S.

¹¹ Section 775.082(3)(d), F.S.

¹² Section 775.082(4)(a), F.S.

C. Government Sector Impact:

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant fiscal impact upon the cost of housing prisoners within the Department of Corrections.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

¹³ Criminal Justice Impact Conference, *2012 Session Bills and Links to Backup Materials*, available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/index.cfm> (last visited Jan. 13, 2012).

By Senator Negrón

28-00372B-12

2012858

A bill to be entitled

An act relating to knowingly and willfully giving false information to a law enforcement officer; amending s. 837.055, F.S.; providing that it is a third-degree felony for a person to knowingly and willfully give false information to a law enforcement officer conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation if the child suffers great bodily harm, permanent disability, permanent disfigurement, or death; providing criminal penalties; providing an effective date.

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

Section 1. Section 837.055, Florida Statutes, is amended to read:

837.055 False information to law enforcement during investigation.—

(1) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with

Page 1 of 2

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

28-00372B-12

2012858

the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2012.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic False Information to LEO

Bill Number 858
(if applicable)

Name Lisa Henning

Amendment Barcode _____
(if applicable)

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr.

Phone 850-766-8808

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic _____

Bill Number 858
(if applicable)

Name Meghan Hoza

Amendment Barcode _____
(if applicable)

Job Title Governmental Affairs

Address 10521 SW Village Center Dr. Ste 101
Port St Lucie, FL 34987
Street City State Zip

Phone (772) 345-5297

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Broward County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic False Info LEO

Bill Number SB 858
(if applicable)

Name Larry Lockwood

Amendment Barcode _____
(if applicable)

Job Title (President) Orange County Sheriff's FOP

Address 844 Woodmeade Ct.

Phone 321-436-6128

Street
Orlando, Fla. 32828
City State Zip

E-mail FOP93@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Orange County Sheriff FOP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic GIVING FALSE INFO to L.E

Bill Number 0850
(if applicable)

Name TED Broom

Amendment Barcode _____
(if applicable)

Job Title Ret'd Lt. Charlotte County Sheriff

Address 617 TAHITI Ct.
Street

Phone 941-628-3753

Punta Gorda
City State Zip

E-mail TEDBroomFop66@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FRATERNAL ORDER OF POLICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/12

Meeting Date

Topic GIVING False Information

Bill Number 0858
(if applicable)

Name Gregory Stevanus

Amendment Barcode _____
(if applicable)

Job Title Police officer

Address 11250 N. 56TH ST
Street

Phone (813) 777-1254

Temple Terrace, FL 33617
City State Zip

E-mail gstev82@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FRATERNAL ORDER of Police

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-18-12
Meeting Date

Topic Give false information

Bill Number 0858
(if applicable)

Name Relinde Broom

Amendment Barcode _____
(if applicable)

Job Title Retired deputy Sheriff

Address 617 Tahiti Ct
Street
Punta Gorda FL 33950
City State Zip

Phone 941-457-1010

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 19 / 2012

Meeting Date

Topic _____

Bill Number 858
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 858
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
X		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SM 1142

INTRODUCER: Judiciary Committee and Senator Hays

SUBJECT: Federal Balanced Budget Amendment

DATE: January 19, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. White	Cibula	JU	Fav/CS
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Through this Senate Memorial, the Legislature petitions Congress to propose to the states an amendment to the United States Constitution that requires the federal budget to be balanced each year.

II. Present Situation:

Methods of Proposing Amendments to U.S. Constitution

Legal scholarship notes that two methods for proposing amendments to the U.S. Constitution emerged as a compromise among “Founding Fathers” who disagreed on the respective roles of Congress and the states in proposing amendments to the document. Although some participants in the Philadelphia Convention of 1787 argued that Congress’ concurrence should not be required to amend the Constitution, others argued that Congress should have the power to propose amendments, and the states’ role should be restricted to ratification.¹ The language ultimately agreed upon, and which became article V of the U.S. Constitution, states:

¹ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1006-07 (2007).

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Thus, the Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress may propose an amendment itself, upon the agreement of two-thirds of both houses. Under the second, Congress, upon application from legislatures in two-thirds of the states, “shall call a Convention for proposing Amendments.”² Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.³ The President has no ability to veto an amendment proposal, nor a ratification.⁴

The Congressional Proposal Method

In the route taken by all amendments to the U.S. Constitution, a bill passes both houses of the legislature, by a two-thirds majority in each, and then goes on to the states for ratification. To avoid the delay of long outstanding amendments,⁵ Congress will normally put a time limit for the bill to be approved as an amendment.⁶

Florida’s 1988 Request to Congress for a Balanced Federal Budget

In 1988, the Legislature adopted a measure urging congressional action related to the federal budget deficit. Adopted by both chambers, Senate Memorial 302, rather than making application for a constitutional convention, urged Congress to use its own power to propose an amendment to the U.S. Constitution requiring the federal budget to be in balance except under specified emergencies.

² U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the State Constitution: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitution revision commission (FLA. CONST. art. XI, s. 2); by citizen initiative (FLA. CONST. art. XI, s. 3); by a constitutional convention to consider revision to the entire document called by the people of the state (FLA. CONST. art. XI, s. 4); and by a taxation and budget reform commission (FLA. CONST. art. XI, s. 6). Regardless of the method by which an amendment to the Florida Constitution is proposed, the amendment must be approved by at least 60 percent of the electors voting on the measure (FLA. CONST. art. XI, s. 5(e)).

³ U.S. CONST. art. V.

⁴ *Id.*; *Hollingsworth v Virginia*, 3 U.S. 378, at 381 n. 1 (1798) (“The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution.”).

⁵ The 27th amendment was ratified in 1992, nearly 203 years after it was proposed in 1789.

⁶ The 21st and 22nd amendments contain clauses requiring ratification “within seven years from the date of ... submission ... to the States by the Congress.”

The memorial specified that it superseded “all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget,” including the two memorials passed in 1976. The 1988 memorial further specified that the previous memorials were “revoked and withdrawn.”⁷

The Convention Method

Despite the fact that over time states have made at least 400 convention applications to Congress on a variety of topics,⁸ the constitutional convention method of proposing amendments has never been fully employed and, as authors have noted, occupies some unknown legal territory. Some of the legal questions surrounding the method relate to whether Congress has discretion to call a convention once 34 states make application; whether the scope of a convention may be limited to certain subject matters and by whom; and how applications from the states are to be tallied – “separately by subject matter or cumulatively, regardless of their subject matter.”⁹

Over time, some states have rescinded applications, in part amid concerns that the scope of a constitutional convention could extend to subjects beyond the subject proposed in a given state’s application. For example, in 2003 the Arizona Legislature adopted a concurrent resolution that “repeals, rescinds, cancels, renders null and void and supersedes any and all existing applications to the Congress ... for a constitutional convention ... for any purpose, whether limited or general.”¹⁰ Article V of the U.S. Constitution is silent on the legal effect of a state’s decision to rescind a previously submitted application.

Calls for a Constitutional Convention on a Balanced Federal Budget

One of the country’s most significant movements toward activation of the constitutional convention method of proposing an amendment to the U.S. Constitution occurred starting in the mid-1970s, when eventually 32 states adopted measures, of varying forms, urging Congress to convene a constitutional convention to address federal budget deficits.¹¹ Depending upon the manner of tallying applications, that count was two short of the 34 state applications necessary under article V of the U.S. Constitution.

Florida’s 1976 Convention Application

Florida participated in that movement, when in 1976 the Legislature adopted Senate Memorial 234. Through that memorial, the Legislature made “application to the Congress of the United States ... to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.”¹²

⁷ Senate Memorial 302 (Reg. Sess. 1988).

⁸ Rogers, *supra* note 1, at 1005. The author cites this figure as of 1993.

⁹ *Id.*

¹⁰ Senate Concurrent Resolution 1022, State of Arizona, Senate, Forty-sixth Legislature (First Reg. Sess. 2003) (copy on file with the Florida Senate Committee on Judiciary). The concurrent resolution notes that “certain persons or states have called for a constitutional convention on issues that may be directly in opposition to the will of the people of this state.” *Id.*

¹¹ E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).

¹² Senate Memorial 234 (Reg. Sess. 1976).

That same year, the Legislature adopted House Memorial 2801, through which the Legislature also made application to Congress for a convention to consider an amendment to the U.S. Constitution requiring a balanced federal budget. Unlike Senate Memorial 234, House Memorial 2801 prescribed the precise language of the proposed constitutional amendment. Among other provisions, the proposed amendment stated:

[T]he Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year. ... There shall be no increase in the national debt, and the existing debt, as it exists on the date which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification.

The proposed constitutional language also authorized Congress to suspend the requirement for a balanced budget in times of national emergency, as identified by a concurrent resolution of three-fourths of the membership of the U.S. Senate and the U.S. House of Representatives.

House Memorial 2801 further specified that “the purview of any convention called by the Congress pursuant to this resolution [shall] be strictly limited to the consideration” of a balanced-budget amendment. In addition, the Legislature resolved that the 1976 application for a constitutional convention “constitutes a continuing application ... until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.”¹³

Florida’s 2010 Application to Congress

In 2010, the Legislature again adopted a measure making application to Congress for a constitutional convention. Senate Concurrent Resolution 10 asked Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States “to achieve and maintain a balanced budget,” and “to control the ability of the Congress and the various federal executive agencies to require states to expend funds.” Like previous requests to Congress, the concurrent resolution stated that it superseded all previous memorials applying to Congress to call a constitutional convention.¹⁴

The concurrent resolution proposed achieving and maintaining a balanced federal budget by requiring the balanced budget to account for all obligations of the federal government; providing exceptions to the requirement for a balanced budget in cases of national emergencies or threats to national security; imposing spending limits on the federal government; establishing extraordinary vote requirements for new or increased federal taxes and other revenues; and prohibiting federal mandates on states to impose taxes or fees.

¹³ House Memorial 2801 (Reg. Sess. 1976).

¹⁴ Senate Concurrent Resolution 10 (Reg. Sess. 2010).

Florida's 2011 Application to Congress

In 2011, the Florida Senate adopted a concurrent resolution making application to the Congress of the United States to call an article V constitutional convention for the sole purpose of proposing an amendment to the Constitution to achieve and maintain a balanced budget.¹⁵ The Florida House of Representatives did not vote on the resolution.

The concurrent resolution made proposals to Congress for achieving and maintaining a balanced federal budget by, among other things, requiring that total outlays not exceed total receipts for any fiscal year, and requiring the setting of a fiscal year total outlay limit. The resolution proposed the possibility of Congressional waiver under specific circumstances. Additionally, the resolution proposed prohibiting increases in taxes or other revenue sources. The concurrent resolution specified that it is revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any purpose other than requiring a balanced federal budget.

State Balanced-Budget Requirements

Although it notes disagreement on what is meant by a “balanced budget,” the National Conference of State Legislatures reports that 49 states have at least a limited statutory or constitutional requirement of a balanced budget, with Vermont being the exception.¹⁶ Florida’s requirement is prescribed in article VII, section 1 of the Florida Constitution. The constitution requires that “[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.”¹⁷ Among other elements, the implementing statute, s. 216.221, F.S., provides that all appropriations shall be maximum appropriations, based on the collection of sufficient revenue. In addition, “[i]t is the duty of the Governor, as chief budget officer, to ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund.”¹⁸

Section 215.98, F.S., provides that the “Legislature shall not authorize the issuance of additional state tax-supported debt if such authorization would cause the designated benchmark debt ratio of debt service to revenues available to pay debt service to exceed 7 percent unless” it finds that the additional debt is necessary to address a critical state emergency.¹⁹

Federal Budget Deficit and National Debt

The federal government incurred a budget deficit of \$1.3 trillion for fiscal year 2011.²⁰ This is an amount similar to deficits incurred in 2010 and 2009. The Congressional Budget Office (CBO) has explained that large recent deficits:

¹⁵ Senate Concurrent Resolution 4 (Reg. Sess. 2011).

¹⁶ Nat’l Conference of State Legislatures, *State Balanced Budget Provisions* (updated 2010), <http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx> (last visited Jan. 13, 2012).

¹⁷ FLA. CONST. art VII, s. 1(d).

¹⁸ Section 216.221(1), F.S.

¹⁹ Section 215.98(1), F.S.

²⁰ United States Government Accountability Office, *Statement of the Comptroller General of the United States* (Dec. 23, 2011), <http://www.gao.gov/financial/fy2011/11gao1.pdf> (last visited Jan. 16, 2012).

reflect a combination of factors: an imbalance between revenues and spending that predates the recession and turmoil in financial markets, sharply lower revenues and elevated spending associated with those economic conditions, and the costs of various federal policies implemented in response to those conditions.²¹

In turn, these deficits, that have been ongoing and generally increasing since 2002, have caused the federal debt to increase significantly. As of January 16, 2012, the federal government's total public debt outstanding is estimated to be \$15.24 trillion. Of this amount, \$10.48 trillion is debt held by the public and \$4.76 trillion is debt held by government trust funds.²² For comparison purposes, on January 16, 2002, ten years ago, total public debt outstanding was estimated to be \$5.92 trillion.²³

Measuring the debt in relation to other more tangible figures can aid in the task of conceptualizing a debt that has grown to trillions of dollars. One way to measure the debt burden is to allocate it to residents in per capita shares. For January 2012, the total public debt outstanding would be borne by each resident of the United States in an amount greater than \$48,500.²⁴ Another measure of the national debt is the size of the debt burden relative to GDP. In the past few years, the amount of total federal debt surged from 65 percent of GDP at the end of 2007²⁵ to 100 percent of GDP by the third quarter of 2011.²⁶

Although the CBO predicts that “deficits will total roughly \$7 trillion over the next 10 years,” current laws can be changed to bring deficits lower.²⁷ The CBO's 2011 Long-Term Budget Outlook makes clear that the burden of paying debt grows with the interest on it.²⁸ Under one

²¹ Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021, Summary* (Jan. 2011), <http://www.cbo.gov/ftpdocs/120xx/doc12039/SummaryforWeb.pdf> (last visited Jan. 16, 2012).

²² Debt held by the public represents money owed to those holding government securities such as Treasury bills and bonds. Total debt includes intra-governmental debt, which includes amounts owed to the Social Security Trust Funds and Civil Service Retirement Funds. TreasuryDirect, *The Debt to the Penny and Who Holds It*, <http://www.treasurydirect.gov/NP/BPDLLogin?application=np> (last visited Jan. 16, 2012). TreasuryDirect is a financial services website through which a person may purchase and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form. TreasuryDirect is a service of the U.S. Department of the Treasury Bureau of the Public Debt. See TreasuryDirect, *About TreasuryDirect*, <http://www.treasurydirect.gov/about.htm> (last visited Jan. 11, 2012).

²³ *Id.*

²⁴ The U.S. national population estimate is 312,863,089 persons, as of January 16, 2012. U.S. Census Bureau, *U.S. and World Population Clocks*, <http://www.census.gov/main/www/popclock.html> (last visited Jan. 16, 2012) (“The U.S. population clock shows a series of short-term projections for the resident population of the United States,” including people whose usual residence is in the 50 states and the District of Columbia, but not members of the Armed Forces overseas, their dependents, or other U.S. citizens residing outside the United States.).

²⁵ In the 2007 fiscal year, U.S. federal debt held by the public was approximately \$5 trillion (36.8 percent of GDP) and total debt was \$9 trillion (65.5 percent of GDP). TreasuryDirect, *supra* note 22.

²⁶ In the third quarter of 2011, GDP rose to \$15,180.9 billion. Bureau of Economic Analysis, U.S. Department of Commerce, News Release BEA 11-55 (Nov. 22, 2011), http://www.bea.gov/newsreleases/national/gdp/2011/pdf/gdp3q11_2nd.pdf (last visited Jan. 15, 2012).

²⁷ Congressional Budget Office, *The Macroeconomic and Budgetary Effects of an Illustrative Policy for Reducing the Federal Budget Deficit* (July 14, 2011), http://www.cbo.gov/ftpdocs/123xx/doc12310/07-14-DeficitReduction_forweb.pdf (last visited Jan. 16, 2012).

²⁸ Congressional Budget Office, *CBO's 2011 Long-Term Budget Outlook* (June 2011), at 1-2, http://www.cbo.gov/ftpdocs/122xx/doc12212/06-21-Long-Term_Budget_Outlook.pdf (last visited Jan. 16, 2012).

fiscal scenario,²⁹ if revenues “increase much more slowly than spending,” and debt held by the public continues to grow according to current policy,³⁰ annual federal spending on interest rises “from about 1 percent of GDP today to 9 percent by 2035.”³¹ Continued rising debt, and interest on the debt, will have a negative impact on economic output and incomes, unless it is reversed.³²

III. Effect of Proposed Changes:

Through this memorial, the Legislature petitions Congress to propose to the states an amendment to the United States Constitution which requires the federal budget to be balanced each year. This memorial makes a request for Congress to make its own proposal to the states, in accordance with one of the two amendment methods set out in the U.S. Constitution. The concurrent resolution does not contain specific constitutional language; nor does it propose how to achieve and maintain a balanced federal budget.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

After passage, the Senate President signs the memorial. The memorial is not subject to approval or veto by the Governor.

Other Potential Implications:

Unlike Florida, which has a constitutional requirement for raising sufficient revenue to defray the expenses of the state in each fiscal year, the U.S. Constitution does not contain a requirement for a balanced federal budget. Amending the U.S. Constitution to require a balanced federal budget would represent a fundamental change in federal fiscal policy and practice and would undoubtedly affect decisions ranging from the nature and quantity of government expenditures to the sources and level of revenue generation. The potential implications for government at all levels and for private citizens and businesses are difficult to quantify but likely to be significant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁹ The CBO names this set of assumptions the “alternative fiscal scenario.” The *CBO’s 2011 Long-Term Budget Outlook* also makes projections based on a set of assumptions labeled the “extended-baseline scenario.”

³⁰ Debt held by the public would, “balloon to nearly 190 percent of GDP by 2035” under this scenario. *Id.*

³¹ *Id.*

³² For policy recommendations and other considerations for reducing the federal budget deficit, See CBO, *The Macroeconomic and Budgetary Effects of an Illustrative Policy for Reducing the Federal Budget Deficit*, *supra* note 27.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Senate Memorial 1142 petitions Congress to propose to the states an amendment to the United States Constitution, which requires the federal budget to be balanced each year. See the “Present Situation” section of this bill analysis for a discussion of the methods of proposing amendments to the Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The memorial itself does not directly affect the private sector fiscally. However, to the extent the Congress takes actions ultimately resulting in amendments to the U.S. Constitution requiring a balanced federal budget, the private sector may be affected by budgetary and economic changes stemming from the constitutional changes.

C. Government Sector Impact:

The memorial itself does not directly affect state government or local governments fiscally. However, to the extent the Congress takes actions ultimately resulting in amendments to the U.S. Constitution requiring a balanced federal budget, the government sector may be affected by budgetary and economic changes stemming from the constitutional changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill includes “whereas” clauses containing references to debt figures and budget projections that the Legislature may consider updating. The “current national debt” figures, which represent the total public debt outstanding, could be updated to reflect a better understanding of the debt situation since the bill was drafted.³³

Similarly, two “whereas” clauses containing projected data can be updated because final data now exists. For 2011, the Congressional Budget Office reports a federal budget deficit of \$1.3 trillion, or a national deficit equal to nearly 8.7 percent of the country’s entire economic output,

³³ Total public debt outstanding continued to grow from \$14.3 trillion in August of 2011 to \$15.2 trillion in January of 2012. The associated share of the public debt per resident is over \$48,500.

the third largest share of entire economic output this country has experienced since 1945.³⁴ Lastly, total public debt outstanding already exceeded current GDP, so it is unnecessary for the bill to refer to a projection of this event occurring by December, 2012.³⁵

VIII. Additional Information:

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

CS by Judiciary on January 19, 2012:

The committee substitute replaced three “whereas” clauses in the original bill in order to remove outdated debt figures and budget projections. The committee substitute specifies the amount of total public debt outstanding as of December 30, 2011; the cost per capita of the total public debt as of December 30, 2011; the 2011 fiscal year federal budget deficit; and the debt to GDP ratio as of January 2012.

- B. Amendments:

None.

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

³⁴ Congressional Budget Office Director’s Blog, *Federal Budget Deficit for Fiscal Year 2011: \$1.3 Trillion* (Nov. 8, 2011) <http://cboblog.cbo.gov/?p=2998> (last visited Jan. 16, 2012).

³⁵ *Total public debt outstanding* reached parity with GDP as early as November 1, 2011. The *total debt held by the public* is around 68% of GDP, as of January 2012. For explanation of differences between these two measures, see *supra* note 22.



446810

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

In title, delete lines 10 - 21
and insert:

WHEREAS, as of December 30, 2011, the national debt was more than \$15.2 trillion, a cost of more than \$48,500 for each man, woman, and child in the United States, and it is growing at an alarming rate, and

WHEREAS, for the 2011 fiscal year, the Congressional Budget Office reports a federal budget deficit of \$1.3 trillion, or a national deficit equal to nearly 10 percent of the country's entire economic output, the third-largest share of entire



446810

14 economic output this country has experienced since 1945, and
15 WHEREAS, the total national debt outstanding exceeds the
16 current gross domestic product of the United States, as of
17 January 2012, and

By Senator Hays

20-01411-12

20121142__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to propose to the states an amendment to the Constitution of the United States that requires the federal budget to be balanced each year.

WHEREAS, a balanced budget amendment to the United States Constitution has been proposed in the United States Congress, and

WHEREAS, the current national debt is over \$14.3 trillion, a cost of approximately \$46,000 for each man, woman, and child in the United States, and is growing at an alarming rate, and

WHEREAS, for 2011, the Congressional Budget Office projects that, if current laws remain unchanged, the federal budget will show a deficit of close to \$1.5 trillion, or a national deficit equal to nearly 10 percent of the country's entire economic output, one of the largest shares of entire economic output this country has experienced since 1945, and

WHEREAS, if the White House budget projections come to pass, the national debt will exceed the current gross domestic product of the United States by December 2012, and

WHEREAS, this spending has created national security concerns that the total interest expense on the debt due by the Federal Government for Federal Fiscal Year 2010 alone, approximately \$414 billion, is almost eight times greater than the 2010 fiscal year budget of the Department of Homeland Security of \$55.3 billion, and

WHEREAS, equally as concerning, foreign-owned debt accounted for approximately 31.5 percent of the total federal

Page 1 of 2

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

20-01411-12

20121142__

debt as of May 2011, and foreigners are, therefore, in a unique position of authority with respect to the United States, and

WHEREAS, credit agencies have already downgraded the nation's AAA credit rating due to the size of its indebtedness and these very large federal budget deficits, deficits that could potentially further destabilize government finances and financial markets, and

WHEREAS, millions of people in this country have made difficult choices discerning between wants and needs and have taken the responsible steps to curb personal spending in these difficult economic times, NOW, THEREFORE,

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

That the Florida Legislature respectfully petitions the Congress of the United States to propose to the states an amendment to the United States Constitution that requires the federal budget to be balanced each year.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 19 / 2012

Meeting Date

Topic _____

Bill Number 1142
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SM 1142
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1236

INTRODUCER: Senator Hays

SUBJECT: Liens for Ginning Cotton

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Irwin	Cibula	JU	Favorable
2.			AG	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill repeals s. 713.595, F.S., which creates a superior lien in favor of a person who performs the service of ginning or classifying cotton for a cotton producer.

This bill repeals section 713.595, Florida Statutes.

II. Present Situation:

State Statutory Liens

While s. 713.595, F.S., creates a specific lien for cotton ginner and classifiers, s. 713.58(1), F.S., authorizes a lien “[i]n favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed, or which is used in the business, occupation, or employment in which the labor or services is performed.”

Uniform Commercial Code

Chapter 679, F.S., codifies Article 9 of the Uniform Commercial Code, which governs secured transactions. Section 679.1021(1)(e), F.S., states, an agricultural lien means an interest, other than a security interest, in farm products: (1) which secures payment or performances of an obligation for goods or services furnished in connection with a debtor’s farming operation or rent on real property leased by a debtor in connection with the debtor’s farming operations; (2) which is created by statute in favor of a person who in the ordinary course of the person’s business furnished goods or services to a debtor in connection with a debtor’s farming operations or

leased real property to a debtor in connection with the debtor's farming operation; and (3) whose effectiveness does not depend on the person's possession of the personal property.

Additionally, s. 679.2031(7), F.S., provides that "the attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien." This section "codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien."¹

III. Effect of Proposed Changes:

The bill repeals s. 713.595, F.S., which:

- Creates a superior lien in favor of a person who performs the service of ginning or classifying cotton for a cotton producer; and
- Authorizes a ginner or classifier to withhold a cotton producer's warehouse receipts or the proceeds from the sale of cotton or a loan on the cotton until paid in full.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As these liens are provided for under other statutory provisions, no significant private sector impact is anticipated.

¹ 47 FLA. JUR 2D SECURED TRANSACTIONS s. 137 *Automatic Attachment Resulting from Related Security Interests* (2011); see also Official Comment 9 to U.C.C. s. 9-203 (2000).

C. Government Sector Impact:

As these liens are provided for under other statutory provisions, no significant government sector impact is anticipated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Hays

20-01295-12

20121236__

A bill to be entitled

An act relating to liens for ginning cotton; repealing
s. 713.595, F.S., relating to liens for labor or
services in ginning cotton; providing an effective
date.

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

Section 1. Section 713.595, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 1236
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
X		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 210

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: Costs of Prosecution, Investigation, and Representation

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Munroe	Cibula	JU	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The bill includes costs of prosecution and costs of representation among those fees, costs and penalties that shall be withheld from cash bond posted on behalf of a defendant. The bill clarifies that the clerk of court shall collect and dispense cost payments in cases that are disposed of by any lawful manner. The bill also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, and 985.032.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases,

unless the prosecutor proves that costs are higher in the particular case before the court.¹ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.³ Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.⁴

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S., and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.⁵

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence. The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.⁶ The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.⁷

¹ Section 938.27(8), F.S.

² *Id.*

³ Section 938.27(1), F.S.

⁴ *Id.*

⁵ Section 27.562, F.S.

⁶ Section 28.246(4), F.S.

⁷ "A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent⁸ to pay the following:

- Court fees;
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Delinquency Cases Exempt

Currently, juveniles who are adjudicated delinquent or have had the adjudication of delinquency withheld are not required to pay the costs of prosecution.

III. Effect of Proposed Changes:

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The bill requires the clerk to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These cases may include criminal

⁸ Licensed under ch. 648, F.S.

traffic violations disposed of pursuant to s. 318.14(10), F.S.⁹ (See the Technical Deficiencies section below.)

The bill requires that costs of prosecution be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Costs of prosecution will be assessed by the court in delinquency cases, which is a new cost not previously assessed.

C. Government Sector Impact:

This bill appears to have a positive fiscal impact on state attorneys and public defenders because:

1. The costs of prosecution and costs of representation will be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.

⁹ In these cases, the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified in s. 318.14(10), F.S. Although s. 938.27(6), F.S., requires the clerk to “collect and disburse cost payments in any case,” which would include costs of prosecution and investigation listed in s. 938.27(8), F.S., state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

2. The costs of prosecution will now be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, it is suggested that clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on January 12, 2012:

The Committee Substitute deleted the parts of the bill that provided for the assessment of costs of prosecution in cases that are dismissed after completion of felony and misdemeanor drug court programs.

The Committee Substitute also deleted the prohibition in the bill against a court converting costs of prosecution to community service.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Wise

591-01858-12

2012210c1

A bill to be entitled

An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of

591-01858-12

2012210c1

prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2) (a) The court shall impose the costs of prosecution and

591-01858-12 2012210c1

59 investigation notwithstanding the defendant's present ability to
60 pay. The court shall require the defendant to pay the costs
61 within a specified period or in specified installments.

62 (b) The end of such period or the last such installment
63 shall not be later than:

64 1. The end of the period of probation or community control,
65 if probation or community control is ordered;

66 2. Five years after the end of the term of imprisonment
67 imposed, if the court does not order probation or community
68 control; or

69 3. Five years after the date of sentencing in any other
70 case.

71
72 However, in no event shall the obligation to pay any unpaid
73 amounts expire if not paid in full within the period specified
74 in this paragraph.

75 (c) If not otherwise provided by the court under this
76 section, costs shall be paid immediately.

77 (3) If a defendant is placed on probation or community
78 control, payment of any costs under this section shall be a
79 condition of such probation or community control. The court may
80 revoke probation or community control if the defendant fails to
81 pay these costs.

82 (4) Any dispute as to the proper amount or type of costs
83 shall be resolved by the court by the preponderance of the
84 evidence. The burden of demonstrating the amount of costs
85 incurred is on the state attorney. The burden of demonstrating
86 the financial resources of the defendant and the financial needs
87 of the defendant is on the defendant. The burden of

591-01858-12 2012210c1

88 demonstrating such other matters as the court deems appropriate
89 is upon the party designated by the court as justice requires.

90 (5) Any default in payment of costs may be collected by any
91 means authorized by law for enforcement of a judgment.

92 (6) The clerk of the court shall collect and dispense cost
93 payments in any case regardless of whether the disposition of
94 the case takes place before the judge in open court or in any
95 other manner provided by law.

96 (7) Investigative costs that are recovered shall be
97 returned to the appropriate investigative agency that incurred
98 the expense. Such costs include actual expenses incurred in
99 conducting the investigation and prosecution of the criminal
100 case; however, costs may also include the salaries of permanent
101 employees. Any investigative costs recovered on behalf of a
102 state agency must be remitted to the Department of Revenue for
103 deposit in the agency operating trust fund, and a report of the
104 payment must be sent to the agency, except that any
105 investigative costs recovered on behalf of the Department of Law
106 Enforcement shall be deposited in the department's Forfeiture
107 and Investigative Support Trust Fund under s. 943.362.

108 (8) Costs for the state attorney shall be set in all cases
109 at no less than \$50 per case when a misdemeanor or criminal
110 traffic offense is charged and no less than \$100 per case when a
111 felony offense is charged, including a proceeding in which the
112 underlying offense is a violation of probation or community
113 control. The court may set a higher amount upon a showing of
114 sufficient proof of higher costs incurred. Costs recovered on
115 behalf of the state attorney under this section shall be
116 deposited into the State Attorneys Revenue Trust Fund to be used

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during the fiscal year in which the funds are collected, or in
any subsequent fiscal year, for actual expenses incurred in
investigating and prosecuting criminal cases, which may include
the salaries of permanent employees, or for any other purpose
authorized by the Legislature.

Section 3. Section 985.032, Florida Statutes, is amended to
read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state
attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has
adjudication of delinquency withheld shall be assessed costs of
prosecution as provided in s. 938.27.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 19 / 2012

Meeting Date

Topic _____

Bill Number 210
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ^{in part} ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/19/2012

Meeting Date

Topic COST OF REPRESENTATION

Bill Number 210
(if applicable)

Name HONORABLE NANCY DANIELS

Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER

Address 101 S. MONROE STREET
TALLAHASSEE FL 32301
City State Zip

Phone 850-606-1010

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL. PUBLIC DEFENDER ASSOC., INC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-2012

Meeting Date

Topic COSTS OF PROSECUTION

Bill Number 210
(if applicable)

Name BILL CERVONE

Amendment Barcode _____
(if applicable)

Job Title STATE ATTORNEY, 8TH CIRCUIT

Address 120 W UNIVERSITY AVENUE
Street

Phone 352-374-3686

Gainesville FL 32601
City State Zip

E-mail cervone w@seof.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PROSECUTING ATTORNEY'S ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

COMMITTEE: Judiciary
ITEM: CS/SB 210
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			1/19/2012 10:15AM 1 Motion to vote "YEA" after Roll Call					
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
VA		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5	0		FAV	-				
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SJR 408

INTRODUCER: Senator Simmons

SUBJECT: Revising Age Limits for Judges and Justices

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Senate Joint Resolution 408 proposes an amendment to the Florida Constitution which increases the general mandatory retirement age of judges and justices from 70 to 75.

This joint resolution amends Article 5, section 8 of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age.¹ In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.²

¹ See Memorandum from John Sylvia of the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division to Honorable Edwin J. Bowman, Chairman (Jan. 5, 2005) (on file with the Senate Committee on Judiciary).

² G. Alan Tarr, *Designing an Appointive System: The Key Issues*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

Florida Age Requirements for Judicial Office

Florida currently does not have a minimum age requirement for judicial office, but generally precludes a person from serving as a justice or judge of any court after attaining 70 years of age.³ A justice or judge may serve after 70 years of age on a temporary assignment or to complete a term, one-half of which has been served.⁴ Florida's previous constitution, the Constitution of 1885, did not provide a mandatory retirement age, but did require that justices and judges be at least 25 years old and attorneys at law.⁵ This provision was removed from the Constitution effective in 1973 as part of a revision of Article V⁶ and replaced with the current eligibility requirements, including the mandatory retirement age.

Constitutionality of Mandatory Retirement

A group of state court judges in Missouri challenged the Missouri Constitution's mandatory retirement provision, which required judges to retire at the age of 70.⁷ The judges alleged that the provision, which was very similar to Florida's analogous requirement, violated the Federal Age Discrimination in Employment Act (ADEA)⁸ and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.⁹ The Court held that the ADEA excluded judges from its definition of employees because of their status as policymakers.¹⁰ Additionally, the Court upheld Missouri's constitutional provision despite the judges' argument that it violated the Equal Protection Clause because it served the legitimate government purpose of enabling the people of Missouri to establish "a qualification for those who would be their judges."¹¹

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the Constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹² Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹³ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first

³ FLA. CONST. art. V, s. 8.

⁴ *Id.*

⁵ FLA. CONST. art. V, s. 3 (1885).

⁶ SJR 52-D (1971), adopted in 1972 and effective Jan. 1, 1973.

⁷ MO. CONST. art. V, s. 26.

⁸ 29 U.S.C. ss. 621-34.

⁹ *Gregory v. Ashcroft*, 501 U.S. 452, 456 (1991).

¹⁰ *Id.* at 467.

¹¹ *Id.* at 473.

¹² FLA. CONST. art. XI, s. 1.

¹³ FLA. CONST. art. XI, s. 5(a).

Monday in January following the election, or on such other date as may be specified in the amendment.¹⁴

III. Effect of Proposed Changes:

Senate Joint Resolution 408 proposes an amendment to Article V, section 8 of the State Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of 75 rather than 70. However, a judge who has attained the age of 75 years of age may continue to serve on a temporary assignment or to complete a judicial term.

This joint resolution will take effect on January 7, 2013, if approved by the electors at the 2012 General Election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In order for the Legislature to submit SJR 408 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.¹⁵ If SJR 408 is agreed to by the Legislature, it will be submitted to the voters at the 2012 General Election. In order for SJR 408 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.¹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁴ FLA. CONST. art. XI, s. 5(e).

¹⁵ FLA. CONST. art. XI, s. 1.

¹⁶ FLA. CONST. art. XI, s. 5(e).

C. Government Sector Impact:

According to the Office of the State Courts Administrator, this joint resolution has no fiscal or workload impact on the judiciary.¹⁷

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.¹⁸ Costs for advertising vary depending upon the length of the amendment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

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.

¹⁷ Office of the State Courts Administrator, *2012 Judicial Impact Statement, SJR 408* (Oct. 26, 2011) (on file with the Senate Committee on Judiciary).

¹⁸ FLA. CONST. art. XI, s. 5(d).

By Senator Simmons

22-00380A-12

2012408__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office.

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

That the following amendment to Section 8 of Article V of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—~~A No person is not shall be~~ eligible for the office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. ~~A No~~ justice or judge may not shall serve after attaining the age of seventy-five ~~seventy~~ years except upon temporary assignment or to complete a term, one-half of which has been served. ~~A No~~ person is not eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. ~~A No~~ person is not eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, ~~a no~~ person is not eligible for the office of

22-00380A-12

2012408__

county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person ~~is shall be~~ eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or fewer ~~less~~ if the person is a member in good standing of the bar of Florida.

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

REVISING AGE LIMITS FOR JUDGES AND JUSTICES.—The State Constitution currently prohibits a justice or judge from serving in a judicial office after attaining the age of 70 years except upon temporary assignment or to complete a judicial term, if one-half of the term has been served. This proposed amendment increases the age after which a justice or judge may no longer serve to 75 years of age. However, a justice or judge who has attained the age of 75 years may continue to serve upon temporary assignment or to complete a judicial term.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/12
Meeting Date

Topic RABING RETIREMENT AGE FOR JUDGES Bill Number SJR 408
(if applicable)

Name MARK MAHON Amendment Barcode _____
(if applicable)

Job Title CIRCUIT COURT JUDGE

Address 330 E BAY ST Phone _____
Street
JACKSONVILLE, FL E-mail _____
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing CONFERENCE OF CIRCUIT COURT JUDGES

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 19 / 2012

Meeting Date

Topic _____

Bill Number 408
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

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SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate **COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SJR 408
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 988

INTRODUCER: Senator Joyner

SUBJECT: Probate

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill revises the effective date of the 2011 amendments to s. 732.102, F.S., so that the changes to that section apply only to the estates of decedents dying on or after October 1, 2011. Section 732.102, F.S., was amended in 2011 to revise the share a decedent's spouse receives as part of an intestate estate under certain circumstances.

Effective July 1, 2012, and applicable to estates of persons dying on or after July 1, 2012, the bill:

- amends the definition of "protected homestead" in s. 733.201, F.S., to clarify that real property owned in joint tenancy with right of survivorship is not protected homestead.
- amends s. 732.401(2)(c), F.S., to revise the time under which an attorney in fact or guardian for an incapacitated spouse must file a petition for authority to make an election to take an undivided one-half interest as tenant in common in the decedent's homestead.
- creates s. 732.1081, F.S., to amend the probate code to bar inheritance through intestate succession by a parent from a child in cases when the natural or adoptive parent's parental rights were terminated pursuant to ch. 39, F.S., prior to the death of the child. In such cases, the natural or adoptive parent must be treated as if the parent predeceased the child.

This bill creates section 732.1081, Florida Statutes, and one undesignated section of law.

This bill amends sections 731.201, 732.401, Florida Statutes.

II. Present Situation:

Devise, Descent, and Disclaimer of Homestead Property

The Florida Constitution imposes restrictions on the devise of homestead property, which are designed to protect surviving spouses and minor children. Specifically, article X, section 4 of the Florida Constitution, provides, in part that:

The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there is no minor child.

Additionally, s. 732.4015, F.S., provides that “the homestead shall not be subject to devise¹ if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.” If the owner of homestead real property fails to make a devise of the homestead or attempts to devise homestead in a manner not permitted by the Florida Constitution, ownership descends as outlined in s. 732.401, F.S. Under s. 732.401, F.S., “the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate² in the homestead, with a vested remainder³ to the descendants in being at the time of the decedent's death per stirpes.⁴ Section 732.401, F.S., was amended in 2010 to make it clear that property owned by a decedent in joint tenancy with right of survivorship⁵ is not subject to restrictions on devise.⁶

Prior to the amendments to s. 732.401, F.S., in 2010, the section provided that restrictions on the devise of homestead “[do] not apply to property that the decedent and the surviving spouse owned as tenants by the entirety.”⁷

¹ Section 731.201(10), F.S., defines “devise” when used as a noun to mean “a testamentary disposition of real or personal property.” When used as a verb, the term means “to dispose of real or personal property by will or trust.” Section 732.4015, F.S., describes, “devise” to include a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.”

² “The *life estate* is a freehold estate whose duration is measured by the lives of one or more specified persons.” John G. Sprankling, *Understanding Property Law*, 100 (2000) (citing the RESTATEMENT OF PROPERTY § 18 (1936)).

³ “A vested remainder is a remainder that is created in a living, ascertainable person and (b) not subject to any condition precedent (except the natural termination of the prior estate).” *Id.* at 170-171.

⁴ Per stirpes means “[p]roportionally divided between beneficiaries according to their deceased ancestor's share.” BLACK'S LAW DICTIONARY 1164 (7th ed. 1999).

⁵ “A joint tenancy is one in which the tenants have one and the same interest.” The interest must accrue by one and the same instrument and must commence at one and the same time. The property must be held by one and the same undivided possession. A joint tenancy must be held by two or more persons. At common law, it had the incident of survivorship between or among joint tenants. This has been abolished by statute in Florida, but the statute permits the creation of a joint tenancy with survivorship by specific language.” Henry P. Trawick, Jr., *Trawick's Redfearn Wills and Administration in Florida*, s. 9:7 (2009-2010 edition). See also, s. 689.15, F.S.

⁶ Chapter 2010-132, s. 7, Laws of Florida, codified in s. 732.401(5), F.S., which reads, “[t]his subsection does not apply to property that the decedent owned in tenancy by the entireties or joint tenancy with rights of survivorship.”

⁷ “[A] Tenancy by the entirety” [means a] tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, other takes whole to exclusion of deceased heirs It is essentially a ‘joint tenancy,’ modified by the common-law theory that husband and wife are one person, and survivorship is the predominant and distinguishing feature of each.” BLACK'S LAW DICTIONARY 1164 (Abridged 5th ed. 1983).

Section 731.201(33), F.S., defines “protected homestead” to mean:

the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner’s spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not ***protected homestead***.

Although the definition of “protected homestead” in s. 731.201(33), F.S., specifically exempts property owned as tenants by the entirety, from the definition, it does not exempt property owned as joint tenants with rights of survivorship, from the definition.

Spousal Election with Respect to Homestead

During the 2010 Regular Legislative Session, s. 732.401(2), F.S., was amended to provide the surviving spouse with a choice as to whether to take the life estate in the homestead or elect to take an undivided one-half interest in the homestead as a tenant in common in lieu of the life estate.⁸ This alternative creates a tenancy in common⁹ relationship between the spouse and the decedent’s descendants. Section 732.401(2), F.S., also describes who may make the election, when the election must be made, and the manner of the making the election. In addition to the surviving spouse, the election may also be made on behalf of the surviving spouse by an attorney in fact or guardian of an incapacitated spouse with court approval.¹⁰ The election may be made for the surviving spouse only after the court determines that the election is necessary for the spouse’s best interest during the incapacitated spouse’s probable lifetime. The election must be filed within six months of the decedent’s death. The time for making the election may not be extended except as specified in s. 732.401(2)(c), F.S., which states:

A petition by an attorney in fact or guardian of the property for approval to make the election tolls the time for making the election until 6 months after the decedent’s death or 30 days after the rendition of an order authorizing the election, whichever occurs last.

According to the Real Property, Probate, and Trust Law Section of the Florida Bar (RPPTL), there has been some confusion as to when a petition must be filed under s. 732.401(2)(c), F.S., and the tolling effect of filing such a petition.¹¹

⁸ Chapter 2010-132, s. 7, Laws of Florida.

⁹ A tenancy in common is “[a] tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship.” BLACK’S LAW DICTIONARY 1478 (7th ed. 1999).

¹⁰ Section 732.401(2)(a), F.S.

¹¹ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Amendments to Section 732.401(2)(c), F.S., Relating to Spousal Election With Respect To Homestead* (on file with the Senate Committee on Judiciary).

Surviving Spouse's Intestate Share

Section 732.102, F.S., was amended in 2011 to revise the share a decedent's spouse receives as part of an intestate estate under certain circumstances.¹² Specifically, s. 732.102, F.S., was amended to increase the share a decedent's surviving spouse will receive in an intestate estate to the entire intestate estate when all of the decedent's descendants are also descendants of the surviving spouse and the surviving spouse does not have any other descendants.¹³ If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, then the surviving spouse gets one-half of the intestate estate.¹⁴ If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, the surviving spouse gets one-half of the intestate estate.¹⁵

Section 14, ch. 2011-183, Laws of Florida, provides that "except as otherwise expressly provided in this act, this act shall take effect upon becoming a law and shall not apply to all proceedings pending before such date and all cases commenced on or after the effective date." Section 2, ch. 2011-183, Laws of Florida did not expressly address the application of s. 732.102, F.S., (2011), and other statutes amended in ch. 2011-183, Laws of Florida, to apply to estates pending or filed on or after October 1, 2011 for decedents dying before October 1, 2011.¹⁶

The Real Property, Probate and Trust Law Section of The Florida Bar's Probate Law and Procedure Committee reports that the committee "has received numerous inquiries from lawyers expressing confusion as to whether the statute applies to estates of decedents dying before October 1, 2011 but were pending as of October 1, 2011."¹⁷

The confusion arose for two reasons:

- First, s. 2, ch. 2011-182, Laws of Florida, did not address whether the amendments to s. 732.102, F.S. (2011), would apply to estates pending on or filed after October 1, 2011. As a result, one could argue that when the statutes became effective on October 1, 2011. As a result, the amendments applied to all pending cases regardless of when the decedent died.¹⁸
- Second, s. 732.101, F.S., provides that inheritance rights vest at death.¹⁹

To eliminate any confusion, the Real Property, Probate and Trust Law Section of The Florida Bar supports an amendment to clarify that the 2011 amendments to s. 732.102, F.S., apply only to estates of persons dying on or after October 1, 2011.

¹² Chapter 2011-183, s. 2, Laws of Florida.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Amendments to Section 732.102, F.S., Clarifying Effective Date* (2010) (on file with the Senate Committee on Judiciary).

¹⁷ Correspondence with the Real Property, Probate, and Trust Law Section of The Florida Bar (on file with the Senate Committee on Judiciary).

¹⁸ *Id.*

¹⁹ *Id.*

Termination of Parental Rights and Inheritance Rights under Intestacy

Chapter 39, F.S., generally authorizes the termination of parental rights for abuse, abandonment, or neglect. The chapter does not specifically address whether an intestate estate of a child whose parents had their parental rights terminated may take an intestate share of the child's estate. A minor may not legally disinherit a parent whose parental rights have been terminated.²⁰

Any property of decedent that is not disposed of by his or her will passes to his heirs by intestate succession.²¹ In general, the laws of intestacy are a default for situations when a decedent has failed to or may not make a will. The laws of intestacy attempt to duplicate the dispositive scheme under which the decedent would have wanted if he or she had affirmatively left a valid will.

Section 732.108, F.S., provides requirements for the intestate succession by or from an adopted person. If a child is adopted under the requirements of ch. 63, F.S., then s. 732.108, F.S., provides that for the purposes of intestate succession for the termination of inheritance rights of the natural parents in favor of the adoptive parent or parents. If the child is not legally adopted, for purposes of intestate succession, the inheritance rights of the natural parent whose parental rights have been legally terminated continue to remain.

Under the probate code, a child who becomes 18 and who otherwise meets the requirements to make a will may do so, and may elect whether or not to include a parent whose parental rights have been terminated. The Uniform Probate Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar argues "that it would be appropriate for Florida law to bar inheritance by a parent whose parental rights have been terminated."²²

III. Effect of Proposed Changes:

Section 1. Definition of Homestead The bill revises the definition of "protected homestead" in s. 733.201, F.S., to clarify that real property owned in joint tenancy with right of survivorship is not protected homestead. Thus, clarifying property not subject to devise may be transferred before a person dies by titling property as a joint tenancy with right of survivorship.

Section 2. Application of 2010 Amendments to Revise the Intestate Share Notwithstanding s. 2 or s. 14 of ch. 2011-183, Laws of Florida, the bill provides that amendments to s. 732.104, F.S., made by s. 2 of ch. 2011-183, Laws of Florida, apply only to the estates of decedents dying on or after October 1, 2011.

Section 732.102, F.S., was amended in 2011 to revise the share a decedent's spouse receives as part of an intestate estate under certain circumstances.²³ Specifically, s. 732.102, F.S., was amended to increase the share a decedent's surviving spouse will receive in an intestate estate to

²⁰ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Section 732.1081, [F.S.,] Addressing Inheritance Rights of Parents Whose Parental Rights Have Been Terminated* (2010) (on file with the Senate Committee on Judiciary).

²¹ Section 732.101(1), F.S.

²² *Id.*

²³ Chapter 2011-183, s. 2, Laws of Florida.

the entire intestate estate if all of the decedent's descendants are also descendants of the surviving spouse and the surviving spouse does not have any other descendants.²⁴ If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, then the surviving spouse gets one-half of the intestate estate.²⁵ If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, the surviving spouse gets one-half of the intestate estate.²⁶ The 2011 changes to s. 732.102, F.S., already took effect upon becoming a law are amended to clarify that the changes applied to all proceedings pending before such date and all cases commenced on or after that date.

Section 3. Procedure for Election of Homestead Effective July 1, 2012, and applicable to estates of persons dying on or after July 1, 2012, the bill amends s. 732.401(2)(c), F.S., revises the time under which an attorney in fact or guardian must file a petition for authority to make an elections to take an undivided tenant in common interest in a homestead for an incapacitated spouse. The bill also revises the time when such a petition extends the time for making the election for the incapacitated spouse of a decedent. Under the bill, the petition under s. 732.401(2)(c), F.S., must be filed within 6 months of the decedent's death and if timely filed, the attorney-in-fact or guardian shall have at least 30 days after rendition of the order granting the petition to make the election.

Section 4. Termination of Parental Rights Effective July 1, 2012, and applicable to estates of persons dying on or after July 1, 2012, the bill creates s. 732.1081, F.S., to amend the probate code to bar inheritance through intestate succession of a parent from a child in cases when the natural or adoptive parent's parental rights were terminated pursuant to ch. 39, F.S., prior to the death of the child. In such cases, the natural or adoptive parent must be treated as if the parent predeceased the child.

Section 5. Except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law.

Other Potential Implications:

Section 2 of the bill provides that amendments to s. 732.104, F.S., made by s. 2 of ch. 2011-183, Laws of Florida, apply only to the estates of decedents dying on or after October 1, 2011. Section 2 of the bill, provides for retroactive application to clarify the application of s. 2 of ch. 2011-183, Laws of Florida, only estates of decedents dying on or after October 1, 2011, but may not take effect until the effective date of this bill. "An act may not take effect before it becomes a law, and once it becomes a law it is presumed to apply only prospectively. It is possible, however, for a bill to provide that its provisions apply retroactively, as long as: (1) There is no constitutional proscription against making the provisions retroactive; (2) The act overcomes the presumption

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

that it applies only prospectively by explicitly providing for retroactive application; and (3) Its title conveys notice of this retroactive application.”²⁷

Additionally, at issue is when considering whether a statute should be retroactively applied, the court should determine: whether there is clear evidence that the Legislature intended to apply the statute retrospectively; and whether retroactive application is constitutionally permissible.²⁸

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The homestead ad valorem property tax exemption is in article VII, section 6 of the Florida Constitution, as implemented in ch. 193, F.S., is not implicated by the bill.

Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, the bill amends the definition of “protected homestead” in s. 733.201, F.S., to clarify that real property owned in joint tenancy with right of survivorship, is not protected homestead. The restrictions on the devise of homestead are in article X, section 4 of the Florida Constitution. Under applicable Florida case law a homestead owned by the decedent and another individual in joint tenancy with rights of survivorship is not subject to the restrictions on devise.²⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁷ The Florida Senate, *Manual for Drafting Legislation*, 68 (6th ed. 2009) (citing *Dewberry v. Auto-Owners Ins. Co.*, 363 So. 2d 1077 (Fla. 1978) and *Bates v. State*, 750 So. 2d 6 (Fla. 1999)). See generally, Norman J. Singer and J.D. Shambie Singer, “Prospective or Retroactive Interpretation,” 2 SUTHERLAND STATUTORY CONSTRUCTION § 41:4 (7th ed. 2010).

²⁸ *Florida Hospital Waterman, Inc. v. Buster*, 984 So. 2d 478, 487 (Fla. 2008).

²⁹ *Ostyn v. Olympic*, 455 So. 2d 1137 (Fla. 2d DCA 1984); *Marger v. De Rosa*, 57 So. 3d 866 (Fla. 2d DCA 2011).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Joyner

18-00709B-12

2012988

1 A bill to be entitled
 2 An act relating to probate; amending s. 731.201, F.S.;
 3 excluding real property owned in tenancy by the
 4 entireties or in joint tenancy with rights of
 5 survivorship from the definition of the term
 6 "protected homestead"; clarifying the application of
 7 amendments to s. 732.102, F.S., made by chapter 2011-
 8 183, Laws of Florida, relating to a spouse's share of
 9 an intestate estate; amending s. 732.401, F.S.;
 10 revising the period of time during which an attorney
 11 in fact or guardian of the property of a surviving
 12 spouse may petition for approval to elect to take a
 13 one-half interest in the decedent's homestead;
 14 specifying the minimum duration of an extension of
 15 time; creating s. 732.1081, F.S.; barring inheritance
 16 rights of a natural or adoptive parent whose parental
 17 rights have been previously terminated pursuant to
 18 law; providing for application of the act; providing
 19 effective dates.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Effective July 1, 2012, and applicable to
 24 proceedings pending before or commenced on or after July 1,
 25 2012, subsection (33) of section 731.201, Florida Statutes, is
 26 amended to read:
 27 731.201 General definitions.—Subject to additional
 28 definitions in subsequent chapters that are applicable to
 29 specific chapters or parts, and unless the context otherwise

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

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2012988

30 requires, in this code, in s. 409.9101, and in chapters 736,
 31 738, 739, and 744, the term:
 32 (33) "Protected homestead" means the property described in
 33 s. 4(a)(1), Art. X of the State Constitution on which at the
 34 death of the owner the exemption inures to the owner's surviving
 35 spouse or heirs under s. 4(b), Art. X of the State Constitution.
 36 For purposes of the code, real property owned in tenancy by the
 37 entireties or in joint tenancy with rights of survivorship as
 38 ~~tenants by the entirety~~ is not protected homestead.
 39 Section 2. Notwithstanding section 2 or section 14 of
 40 chapter 2011-183, Laws of Florida, the amendments to section
 41 732.102, Florida Statutes, made by section 2 of that act apply
 42 only to the estates of decedents dying on or after October 1,
 43 2011.
 44 Section 3. Effective July 1, 2012, and applicable only to
 45 estates of persons dying on or after July 1, 2012, section
 46 732.401, Florida Statutes, is amended to read:
 47 732.401 Descent of homestead.—
 48 (1) If not devised as authorized by law and the
 49 constitution, the homestead shall descend in the same manner as
 50 other intestate property; but if the decedent is survived by a
 51 spouse and one or more descendants, the surviving spouse shall
 52 take a life estate in the homestead, with a vested remainder to
 53 the descendants in being at the time of the decedent's death per
 54 stirpes.
 55 (2) In lieu of a life estate under subsection (1), the
 56 surviving spouse may elect to take an undivided one-half
 57 interest in the homestead as a tenant in common, with the
 58 remaining undivided one-half interest vesting in the decedent's

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

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59 descendants in being at the time of the decedent's death, per
60 stirpes.

61 (a) The right of election may be exercised:

62 1. By the surviving spouse; or

63 2. With the approval of a court having jurisdiction of the
64 real property, by an attorney in fact or guardian of the
65 property of the surviving spouse. Before approving the election,
66 the court shall determine that the election is in the best
67 interests of the surviving spouse during the spouse's probable
68 lifetime.

69 (b) The election must be made within 6 months after the
70 decedent's death and during the surviving spouse's lifetime. The
71 time for making the election may not be extended except as
72 provided in paragraph (c).

73 (c) A petition by an attorney in fact or by a guardian of
74 the property of the surviving spouse for approval to make the
75 election must be filed within 6 months after the decedent's
76 death and during the surviving spouse's lifetime. If the
77 petition is timely filed, the time for making the election shall
78 be extended for at least 30 days after the rendition of the
79 order allowing the election ~~tells the time for making the~~
80 ~~election until 6 months after the decedent's death or 30 days~~
81 ~~after the rendition of an order authorizing the election,~~
82 ~~whichever occurs last.~~

83 (d) Once made, the election is irrevocable.

84 (e) The election shall be made by filing a notice of
85 election containing the legal description of the homestead
86 property for recording in the official record books of the
87 county or counties where the homestead property is located. The

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88 notice must be in substantially the following form:

89
90 ELECTION OF SURVIVING SPOUSE
91 TO TAKE A ONE-HALF INTEREST OF
92 DECEDENT'S INTEREST IN
93 HOMESTEAD PROPERTY
94

95 STATE OF.....

96 COUNTY OF.....

97 1. The decedent,, died on On
98 the date of the decedent's death, The decedent was married to
99, who survived the decedent.

100 2. At the time of the decedent's death, the decedent owned
101 an interest in real property that the affiant believes to be
102 homestead property described in s. 4, Article X of the State
103 Constitution, which ~~that~~ real property being in County,
104 Florida, and described as: ...(description of homestead
105 property)....

106 3. Affiant elects to take one-half of decedent's interest
107 in the homestead as a tenant in common in lieu of a life estate.

108 4. If affiant is not the surviving spouse, affiant is the
109 surviving spouse's attorney in fact or guardian of the property,
110 and an order has been rendered by a court having jurisdiction of
111 the real property authorizing the undersigned to make this
112 election.

113
114
115 ...(Affiant)...
116

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Sworn to (or affirmed) and subscribed before me this day of
 ...(month)..., ...(year)..., by ...(affiant)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification
 ...(Type of Identification Produced)...

(3) Unless and until an election is made under subsection
 (2), expenses relating to the ownership of the homestead shall
 be allocated between the surviving spouse, as life tenant, and
 the decedent's descendants, as remaindermen, in accordance with
 chapter 738. If an election is made, expenses relating to the
 ownership of the homestead shall be allocated between the
 surviving spouse and the descendants as tenants in common in
 proportion to their respective shares, effective as of the date
 the election is filed for recording.

(4) If the surviving spouse's life estate created in
 subsection (1) is disclaimed pursuant to chapter 739, the
 interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the
 decedent owned in tenancy by the entireties or in joint tenancy
 with rights of survivorship.

Section 4. Effective July 1, 2012, and applicable only to
 estates of persons dying on or after July 1, 2012, section
 732.1081, Florida Statutes, is created to read:

732.1081 Termination of parental rights.—For the purpose of
intestate succession by a natural or adoptive parent, a natural

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or adoptive parent is barred from inheriting from or through a
child if the natural or adoptive parent's parental rights were
terminated pursuant to chapter 39 prior to the death of the
child, and the natural or adoptive parent shall be treated as if
the parent predeceased the child.

Section 5. Except as otherwise expressly provided in this
 act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-12

Meeting Date

Topic Probate

Bill Number 988
(if applicable)

Name Martha Edenfeld

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10095
Street

Phone 880-222-3533

Tallahassee, FL 32302
City State Zip

E-mail martha@penningtonlaw.com

Speaking: ☐ For ☐ Against ☐ Information

Support the bill

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

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

COMMITTEE: Judiciary
ITEM: SB 988
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
X		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 990

INTRODUCER: Senator Joyner

SUBJECT: Natural Guardians

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Irwin	Cibula	JU	Favorable
2.			CF	
3.				
4.				
5.				
6.				

I. Summary:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill amends section 744.301, Florida Statutes.

II. Present Situation:

Chapter 61, F.S., focuses predominately on issues arising from the dissolution of marriage with the purpose of “mitigat[ing] the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”¹ In 1982, focus was shifted away from the award of custody and onto a presumption of shared parental responsibility in the best interests of the child.² Section 744.301, F.S., dealing with the authority of natural guardians, currently uses the terminology of “custody” and therefore does not reflect the current status of Florida family law.³

¹ Section 61.001(2)(c), F.S.

² 23 FLA. PRAC. *Florida Family Law* s. 9:7 (2011).

³ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Natural Guardians Defined – Section 744.301* (2011) (on file with the Senate Committee on Judiciary).

Additionally, ch. 61, F.S., defines and uses the term “parent.” Section 744.301, F.S., currently uses the terminology “mother and father.”⁴ As a result, s. 744.301, F.S., “does not reflect the current statutory terminology as defined in the Florida Statutes and as used in family law.”⁵

III. Effect of Proposed Changes:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill provides an effect date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Conformity in terminology should alleviate some burden on the private sector for a legal determination on the status of natural guardianship.⁶

C. Government Sector Impact:

Conformity in terminology should alleviate some burden on the need for the State Court System to determine the status of natural guardians.⁷

⁴ Section 61.13001(1)(d), F.S.

⁵ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 3, at 1.

⁶ *Id.*

⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. Amendments:

None.

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

By Senator Joyner

18-00714-12

2012990__

A bill to be entitled

An act relating to natural guardians; amending s. 744.301, F.S.; revising provisions relating to the authority of natural guardians to act on behalf of their children; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 744.301, Florida Statutes, are amended to read:

744.301 Natural guardians.—

(1) The parents ~~mother and father~~ jointly are the natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, ~~custody of the child is awarded. If the parents are given joint custody, then both~~ continue as natural guardians. If the marriage is dissolved and neither parent ~~the father nor the mother~~ is given parental responsibility for custody of the child, neither may ~~shall~~ act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the a court ~~of competent jurisdiction~~ enters an order stating otherwise.

(2) Except as otherwise provided in this chapter ~~natural~~

18-00714-12

2012990__

~~guardians are authorized~~, on behalf of any of their minor children, and without appointment, authority, or bond if the amounts received in the aggregate do not exceed \$15,000, natural guardians may to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any ~~of said~~ minor children;

(b) Collect, receive, manage, and dispose of the proceeds of any ~~such~~ settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined in ~~by~~ s. 710.102, of which the minor is a beneficiary, participant, or owner,

~~without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed \$15,000.~~

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic _____

Bill Number 990
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO BOX 10095
Street
Tallahassee, FL 32302
City State Zip

Phone 850-222-3533

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information Support the bill

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

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

COMMITTEE: Judiciary
ITEM: SB 990
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
		Gardiner						
X		Richter						
X		Simmons						
X		Thrasher						
X		Joyner, VICE CHAIR						
		Flores, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Industry - Policy and Steering,
Vice Chair
Banking and Insurance
Community Affairs
Finance and Tax
Governmental Operations - Policy and Steering
Governmental Oversight and Accountability
Judiciary

SELECT COMMITTEE:
Florida's Economy, *Vice Chair*

JOINT COMMITTEE:
Legislative Auditing

SENATOR JEREMY RING

32nd District

January 19, 2012

Honorable Senator Anitere Flores
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Flores,

I am writing to ask that you allow Joel Ramos to present Senate Bill 670, relating to Real Property on my behalf in front of your committee on January 19, 2012. If you have any questions or concerns, please do not hesitate to contact me or my office.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

cc: Tom Cibula

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

JEFF ATWATER
President of the Senate

MIKE FASANO
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR D. ALAN HAYS

20th District

COMMITTEES:
Budget - Subcommittee on General Government
Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education
Appropriations
Children, Families, and Elder Affairs
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

January 18, 2012

Senator Anitere Flores, Chair
Judiciary Committee
316 Senate Office Building
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SM 1142 Relating to Federal Balanced Budget Amendment
SB 1236 Relating to Liens for Ginning Cotton

Dear Chair Flores:

I will be in committee presenting another bill. Please allow my legislative assistants Paul Runk to present the above referenced bills before the Judiciary Committee on Thursday, January 19, 2012 in my absence.

Thank you for your kind consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Alan Hays", followed by a stylized flourish.

D. Alan Hays, DMD
Senator District 20

CC: **Tom Cibula**, *Staff Director*
Shirley Proctor, *Committee Administrative Assistant*

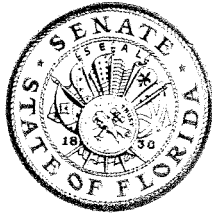
REPLY TO:

- ☐ 671 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and Conservation,
Chair
Criminal Justice, *Vice Chair*
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Governmental Oversight and Accountability
Reapportionment
Regulated Industries

SENATOR CHARLES S. DEAN, SR.

3rd District

January 18, 2012

The Honorable Anitere Flores
316 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Senator Flores:

Thank you for allowing Senate Bill 882, relating to Court Costs, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Travis Hart, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean". The signature is fluid and cursive.

Charles S. Dean
State Senator, Dist.3

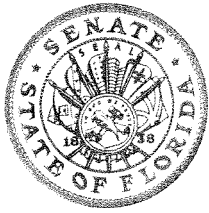
REPLY TO:

- ☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- ☐ Post Office Box 2558, Ocala, Florida 34478-2558 (352) 873-6513
- ☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities,
Chair
Budget - Subcommittee on Finance and Tax
Judiciary
Reapportionment
Rules

SENATOR ANDY GARDINER

Majority Leader
9th District

January 19, 2012

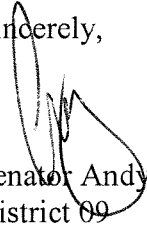
The Honorable Anitere Flores, Chair
Committee on Judiciary
515 Knott
404 South Monroe Street
Tallahassee, Florida

Dear Chair Flores,

I am writing to respectfully request that I be excused from the Judiciary meeting scheduled for today. I have a prior commitment and will not be able to attend.

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

Sincerely,


Senator Andy Gardiner
District 09

AG: svc 

REPLY TO:

- ☐ 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
- ☐ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5047

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Caption: Senate Judiciary Committee

Case:
Judge:

Type:

Started: 1/19/2012 10:19:38 AM
Ends: 1/19/2012 10:58:18 AM **Length:** 00:38:41

10:19:39 AM Meeting Called to Order
10:19:51 AM Roll Call by CAA
10:19:53 AM Remarks by the Chair
10:20:09 AM SB 498 by Senator Lynn
10:20:48 AM Debate
10:21:12 AM SB 498 by Senator Lynn - Closing Remarks
10:21:13 AM Roll Call on SB 498 - Favorable
10:21:37 AM SB 860 by Senator Wise
10:21:44 AM A482738 - Favorable
10:21:45 AM SB 860 by Senator Wise - Closing Remarks
10:21:55 AM Roll Call on SB 860 - Favorable as a CS
10:23:20 AM SB 210 by Senator Wise
10:23:49 AM Bill Dervone - FPA
10:24:40 AM Nancy Daniels - Public Defenders Office
10:27:04 AM Brian Pitts - Justice 2 Jesus
10:31:51 AM SB 210 by Senator Wise - Closing Remarks
10:32:38 AM Roll Call on SB 210 - Favorable
10:33:22 AM SB 858 by Senator Negron
10:35:19 AM Lisa Henning - Fraternal Order of Police
10:36:02 AM SB 858 by Senator Negron - Closing Remarks
10:37:01 AM Roll Call on SB 858 - Favorable
10:38:02 AM SB 670 by Senator Ring - Presented by Joel (Aide)
10:38:05 AM A181120 - Favorable
10:38:44 AM Roll Call on SB 670 - Favorable as a CS
10:39:12 AM SM 1142 by Senator Hays - Presented by Paul (Aide)
10:40:26 AM A446810 - Favorable
10:41:27 AM Roll Call on SM 1142 - Favorable as a CS
10:41:33 AM Senator Simmons
10:42:17 AM Senator Thrasher
10:42:44 AM SB 1236 by Senator Hays - Presented by Paul (Aide)
10:42:55 AM SB 1236 by Senator Hays - Presented by Paul (Waived)
10:43:31 AM Roll Call on SB 1236 - Favorable
10:43:44 AM SB 882 by Senator Dean - by Travis (Aide)
10:44:41 AM SB 882 by Senator Dean - by Travis (Waived)
10:45:06 AM Roll Call on SB 882 - Favorable
10:45:32 AM SJR 408 by Senator Simmons
10:46:06 AM Brian Pitts - Justice 2 Jesus
10:48:33 AM Senator Thrasher
10:50:01 AM SJR 408 by Senator Simmons - Closing Remarks
10:52:32 AM Roll Call on SJR 408 - Favorable
10:53:45 AM SB 988 by Senator Joyner
10:55:04 AM SB 988 by Senator Joyner - Closing Remarks
10:56:04 AM Roll Call on SB 988 - Favorable
10:56:22 AM SB 990 by Senator Joyner
10:57:03 AM SB 990 by Senator Joyner - Closing Remarks
10:57:21 AM Roll Call on SB 990 - Favorable
10:57:42 AM Senator Braynon Motion to Adjourn