

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Flores, Chair
Senator Joyner, Vice Chair

MEETING DATE: Thursday, February 9, 2012
TIME: 1:15 —3:15 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	SJR 108 Negron (Identical HJR 1421)	Constitution Revision Commission and Taxation and Budget Reform Commission; Proposing amendments to the State Constitution to abolish the Constitution Revision Commission and Taxation and Budget Reform Commission, which are authorized to propose amendments to the State Constitution. JU 01/31/2012 JU 02/09/2012 Fav/1 Amendment BC RC	Fav/1 Amendment (Yeas 5 Nays 1
2	CS/SB 370 Children, Families, and Elder Affairs / Wise (Similar H 557)	Supervised Visitation and Exchange Monitoring; Adopting state standards for supervised visitation programs; requiring the standards to be published on the website of the Clearinghouse on Supervised Visitation; requiring supervised visitation programs to conduct security background checks of employees and volunteers; requiring that all applicants hired or certified by a program after a specified date undergo a level 2 background screening; authorizing a supervised visitation program to participate in the Volunteer and Employee Criminal History System in order to obtain criminal history information, etc. CF 01/25/2012 Fav/CS JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0

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Judiciary

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 462 Bogdanoff (Similar CS/H 631)	Terms of Courts; Repealing provisions relating to regular terms of the Supreme Court; repealing provisions relating to terms of the circuit courts; repealing provisions relating to requiring a judge to attend the first day of each term of the circuit court; repealing provisions relating to a requirement for a judge to state a reason for nonattendance; repealing provisions relating to the penalty for nonattendance of the judge; repealing provisions relating to adjournment of the circuit court upon nonattendance of the judge; repealing provisions relating to calling all cases on the docket at the end of each term; repealing provisions relating to regular terms of the district courts of appeal; repealing provisions relating to special terms of the district courts of appeal; providing that appellate courts may withdraw a mandate within 120 days after its issuance, etc. JU 01/31/2012 JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
4	SB 1202 Bogdanoff (Compare CS/H 897)	Construction Liens and Bonds; Requiring that the bond number be stated on the first page of a payment and performance bond relating to a public works construction project; extending the time period for a claimant to serve a notice to contractor or a notice of nonpayment or to file suit against the contractor or surety if the bond is not recorded or if the claimant was not notified of the existence of the bond in writing; requiring that an owner or contract provide specified information sufficient for a lienor to properly identify an account when a sworn statement of account is requested; requiring that the demand for an accounting which is served on the owner include specified information sufficient for the owner to identify the project in question, etc. JU 01/31/2012 JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
5	SB 534 Sobel (Similar H 1273)	Persons Excused from Jury Service; Expanding parental eligibility to be excused from jury service; authorizing a presiding judge to excuse a practicing psychologist from jury service, etc. JU 02/09/2012 Favorable	Favorable Yeas 6 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SJR 720 Garcia (Similar HJR 349)	Miami-Dade County Home Rule Charter; Proposing an amendment to the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors; providing requirements for a bill proposing such a special law; authorizing the Miami-Dade County charter to provide for fixed term limits of commissioners, etc. CA 01/30/2012 Favorable JU 02/09/2012 Favorable BC	Favorable Yeas 4 Nays 2
7	SB 410 Bennett (Identical H 1017)	Electronic Filing of Court and Other Legal Documents; Requiring that a litigant in the courts of this state, the Division of Administrative Hearings, or the Office of the Judges of Compensation Claims pay a specified surcharge in addition to any other cost incurred for filing court and other legal documents by means of paper documents instead of electronically filing the documents; providing an exception for a person who is indigent, etc. JU 01/31/2012 JU 02/09/2012 Not Considered BC	Not Considered
8	CS/SB 826 Banking and Insurance / Bennett (Compare H 961)	Title Insurance Claims; Providing that after a specified time, a title insurer must pay the claim or pay an additional percentage above the initial amount insured to reimburse the policyholder for certain expenses until the claim is cured; providing conditions and amounts for the simultaneous issue of an owner's title insurance policy in addition to the loan title insurance policy; providing criteria for the supplemental coverage; establishing the premium for such coverage and providing for a waiver of coverage; specifying that a title insurer's determination of insurability must be based on the evaluation of a reasonable title search beginning with a root of title, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Fav/CS JU 02/09/2012 Not Considered BC	Not Considered

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 1196 Community Affairs / Bennett (Similar CS/H 1013)	Residential Construction Warranties; Providing legislative intent to affirm the limitations to the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home; prohibiting a cause of action in law or equity based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements; providing that the existing rights of purchasers of homes or homeowners' associations to pursue certain causes of action are not altered or limited, etc. CA 01/23/2012 Fav/CS JU 01/31/2012 JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0
10	SB 748 Diaz de la Portilla (Compare CS/H 549)	Alimony; Revising factors to be considered for alimony awards; providing termination of alimony upon full retirement age; revising provisions relating to the effect of cohabitation on an award of alimony; providing that in the event of the obligor's remarriage or residing with another person, income and assets of the obligor's spouse or person with whom the obligor resides may not be considered in the redetermination in a modification action; providing that if an alimony award has been modified to terminate due to a supportive relationship and that supportive relationship does not produce a marriage, the alimony may not be reinstated; providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified due to the termination of child support, etc. JU 01/31/2012 JU 02/09/2012 Fav/CS BC RC	Fav/CS Yeas 6 Nays 0
11	SJR 838 Diaz de la Portilla (Similar CS/HJR 55)	Homestead Assessment Limitation/Low-income Senior Citizens; Proposing an amendment to the State Constitution to authorize counties and municipalities to limit the assessed value of the homesteads of certain low-income senior citizens, etc. CA 01/30/2012 Favorable JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 802 Environmental Preservation and Conservation (Similar CS/H 313)	Premises Liability; Providing that an owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to a person upon entry to the area; providing that an owner of an area who enters into a written agreement with the state for the area to be used for outdoor recreational purposes is entitled to certain limitations on liability; deleting a requirement that the area be leased to the state in order for the limitations on liability to apply; defining the term "area", etc. EP 01/24/2012 Favorable JU 01/31/2012 JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0
13	CS/SB 1404 Banking and Insurance / Altman (Identical CS/H 643, Compare CS/CS/H 645, Link CS/CS/S 1406)	Title Insurance; Specifying continuing education requirements for title insurance agents; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency; requiring an attorney serving as a title or real estate settlement agent to deposit and maintain certain funds in a separate trust account and permit the account to be audited by the applicable title insurer, unless prohibited by the rules of The Florida Bar; providing procedures and requirements relating to the approval or disapproval of title insurance forms by the Office of Insurance Regulation, etc. BI 01/26/2012 Fav/CS JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
14	SB 1662 Latvala (Similar CS/H 1351, Compare H 139, S 166)	Homeless Youth; Defining the term "certified homeless youth"; providing that a minor who is a certified homeless youth or who has had the disabilities on nonage removed under specified provisions may obtain a certified copy of his or her birth certificate; providing that unaccompanied youths who are certified homeless youths 16 years of age or older shall have specified rights as long as they retain that status, etc. CF 01/31/2012 Favorable JU 02/09/2012 Fav/CS	Fav/CS Yeas 5 Nays 0

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15	SB 2044 Children, Families, and Elder Affairs (Similar CS/CS/H 803, Compare S 384)	Child Protection; Revising the definitions of the term "abandoned" or "abandonment," "institutional child abuse or neglect," and "abandons the child within the context of harm"; revising provisions relating to criminal history records check on persons being considered for placement of a child; requiring that a protective investigation must include an interview with the child's parent or legal guardian; requiring a home study report if a child has been removed from the home and will be remaining with a parent, etc. CF 01/25/2012 Favorable JU 02/09/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0
16	SB 1830 Flores (Similar CS/H 921, Compare H 281, S 1082, CS/S 1182)	Landlords and Tenants; Providing application of certain eviction procedures under part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act"; revising and providing landlord disclosure requirements with respect to deposit money and advance rent; providing requirements for the disbursement of advance rents; providing a rebuttable presumption of receipt of security deposits and a limitation on liability with respect to such deposits; providing that a landlord is not required to notify a tenant of a mortgage default; providing that a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease, etc. JU 02/09/2012 Temporarily Postponed BC	Temporarily Postponed
17	SB 442 Braynon (Identical H 283)	Fair Housing; Providing that an aggrieved person may file a civil action without first filing an administrative complaint for a discriminatory housing practice; providing that, if the Florida Commission on Human Relations or local agency has obtained a conciliation agreement with the consent of the aggrieved person, the filing of a civil action is prohibited, except to enforce the terms of the agreement, etc. CA 01/23/2012 Favorable JU 01/31/2012 JU 02/09/2012 Favorable BC	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: SJR 108

INTRODUCER: Senator Negron

SUBJECT: Constitution Revision Commission and Taxation and Budget Reform Commission

DATE: February 10, 2012

REVISED: _____

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

I. Summary:

This joint resolution repeals provisions in the State Constitution providing for a Constitution Revision Commission and a Taxation and Budget Reform Commission, both of which are scheduled to convene every 20 years and have the authority to examine the State Constitution and directly submit constitutional amendments for the consideration of the voters.

This joint resolution substantially amends article II, s. 5 and article XI, s. 5 of the Florida Constitution.

This joint resolution repeals article XI, ss. 2 and 6 of the Florida Constitution.

II. Present Situation:

In Florida, there are five processes for amending the State Constitution: proposal by the Legislature of a joint resolution agreed to by three-fifths of the membership of each house,¹ which is the most common method;² proposal by the Constitutional Revision Commission, which meets every 20 years;³ proposal by citizen initiative;⁴ a constitutional convention;⁵ and proposal of the Taxation and Budget Reform Commission.⁶

¹ FLA. CONST. art. XI, s. 1.

² Talbot D'Alemberte, THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE, 146 (1991).

³ FLA. CONST. art. XI, s. 2.

⁴ FLA. CONST. art. XI, s. 3.

⁵ FLA. CONST. art. XI, s. 4.

⁶ FLA. CONST. art. XI, s. 6.

Constitution Revision Commission

The Constitution Revision Commission (CRC or commission) was established in the 1968 revision of the Florida Constitution.⁷ The CRC meets every twenty years and is currently scheduled to meet before the convening of the 2017 regular session.⁸ The CRC has a total of 37 members, which include the Attorney General, 15 members selected by the Governor, 9 members selected by the Speaker of the House, 9 members selected by the President of the Senate, and 3 members selected by the Chief Justice of the Supreme Court.⁹ When the organization and makeup of the commission was debated in the process of drafting the 1968 Florida Constitution, one delegate suggested mandating the existence of the CRC in the constitution, but leaving the composition of its members to be prescribed by law.¹⁰ This idea was rejected, because the purpose of creating the CRC as described at the time was to “bypass the Legislature” and have the “[c]ommission go into operation without the necessity of law.”¹¹

Each CRC convenes at the call of the chair, whom the Governor designates, and must adopt rules of procedure, examine the State Constitution, hold public hearings, and file proposed amendments to the constitution, if any, with the custodian the Secretary of State.¹² Florida’s Constitution Revision Commission is unique among mechanisms in other states in that it has the ability to submit proposed constitutional amendments directly to the people for consideration.¹³ There was an amendment to abolish the CRC in 1980, which was defeated by a vote of 1,512,682 (56.5%) to 1,164,824 (43.5%).¹⁴

Taxation and Budget Reform Commission

The Taxation and Budget Reform Commission (TBRC or commission) was created in 1988¹⁵ for the purpose of examining “the tax structure and revenue needs of the State with an aim toward recommending equitable ways to fund current and future growth needs of the State.”¹⁶ The TBRC was patterned after the Constitution Revision Commission.¹⁷ The TBRC is scheduled to meet every 20 years. The TBRC is composed of 25 voting members as follows: 11 members selected by the Governor; 7 members selected by the President of the Senate; and 7 members selected by the Speaker of the House of Representatives. The voting members may not include a person who is a member of the Legislature at the time of appointment. However, the TBRC also includes 4 ex-officio non-voting members who must be members of the Legislature at the time of

⁷ D’Alemberte, *supra* note 2, at 147.

⁸ FLA. CONST. art. XI, s. 2(a).

⁹ FLA. CONST. art. XI, s. 2(a)(1)-(4).

¹⁰ *Debate on Amendment 198*, Constitutional Revision Commission 181 (Dec. 15, 1966) (statement by Mr. Askew) (on file with the Senate Committee on Judiciary).

¹¹ *Debate, supra* note 11 at 182 (statement by Chairman Smith) (delegates also debated whether the number of lawyers permitted to serve on the commission should be limited).

¹² FLA. CONST. art. XI, s. 2(b)-(c).

¹³ D’Alemberte, *supra* note 2, at 147.

¹⁴ Florida Department of State Division of Elections, *November 4, 1980 General Election Official Results*, <http://enight.dos.state.fl.us/Index.asp?ElectionDate=11/4/1980&DATAMODE> (last visited Jan. 27, 2012).

¹⁵ HJR 1616 (1988).

¹⁶ House Committee on Finance and Taxation, *Staff Analysis and Economic Impact Statement, HJR 1616* (May 10, 1988) (on file with the Senate Committee on Judiciary).

¹⁷ *Id.*

appointment.¹⁸ The chair is elected by the members of the commission and cannot be a member of the Legislature.¹⁹ Revision of the constitution by the TBRC requires an affirmative vote of two-thirds of the full commission.²⁰ The TBRC is required to examine the state's budget in great detail, including revenue needs and expenditures, appropriateness of the tax structure, and governmental productivity and efficiency.²¹ The TBRC is then required to hold public hearings as needed and then issue a report with the results of its review and recommended changes to Florida taxation and budget laws.²² Similar to the CRC, the TBRC may also submit proposed constitutional amendments directly to the people, but only within the subject of taxation or the state budgetary process.²³

Amending the Constitution Generally

As previously discussed, 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.²⁴ 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.²⁵ 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 Monday in January following the election, or on such other date as may be specified in the amendment.²⁶

III. Effect of Proposed Changes:

This joint resolution repeals provisions in the State Constitution providing for a Constitution Revision Commission and a Taxation and Budget Reform Commission, both of which are scheduled to convene every 20 years and have the authority to examine the State Constitution and directly submit constitutional amendments for the consideration of voters.

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

¹⁸ FLA. CONST. art. XI, s. 6(a)(1)-(3).

¹⁹ FLA. CONST. art. XI, s. 6(c).

²⁰ *Id.*

²¹ FLA. CONST. art. XI, s. 6(d).

²² FLA. CONST. art. XI, s. 6(e).

²³ *Id.*; see also *Ford v. Browning*, 992 So. 2d 132 (Fla. 2008) (examining the scope of the TBRC's constitutional authority).

²⁴ FLA. CONST. art. XI, s. 1.

²⁵ FLA. CONST. art. XI, s. 5(a).

²⁶ FLA. CONST. art. XI, s. 5(e).

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 108 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.²⁷ If SJR 108 is agreed to by the Legislature, it will be submitted to the voters at the 2012 General Election. In order for SJR 108 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.²⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.²⁹ Costs for advertising vary depending upon the length of the amendment.

VI. Technical Deficiencies:

Members of a revision commission are not elected to a commission. However, a commission may include elected officials. Moreover, the Constitution Revision Commission includes the Attorney General as a voting member. As such, the Legislature may wish to clarify the ballot summary by including the words “to a commission” after the word “elected” on line 172 of the ballot summary.

²⁷ FLA. CONST. art. XI, s. 1.

²⁸ FLA. CONST. art. XI, s. 5(e).

²⁹ FLA. CONST. art. XI, s. 5(d).

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:**

Barcode 799762 by Judiciary on February 9, 2012:

Revises the ballot summary to clarify that although a revision commission may include members who are elected officials, they are not elected to a commission.



799762

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Delete line 172

and insert:

Members of the commissions are not elected to a commission by
the people, but

By Senator Negrón

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Senate Joint Resolution

A joint resolution proposing amendments to Section 5 of Article II and Sections 2, 5, and 6 of Article XI of the State Constitution to abolish the Constitution Revision Commission and Taxation and Budget Reform Commission, which are authorized to propose amendments to the State Constitution.

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

That the following amendments to Section 5 of Article II and Sections 2, 5, and 6 of Article XI of the State Constitution are 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 II

GENERAL PROVISIONS

SECTION 5. Public officers.-

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a ~~constitution revision commission, taxation and budget reform commission,~~ constitutional convention, or statutory body having

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only advisory powers.

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of ... (title of office) ... on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

ARTICLE XI

AMENDMENTS

~~SECTION 2. Revision commission.-~~

~~(a) Within thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty seven members:~~

~~(1) the attorney general of the state;~~

~~(2) fifteen members selected by the governor;~~

~~(3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and~~

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59 ~~(4) three members selected by the chief justice of the~~
60 ~~supreme court of Florida with the advice of the justices.~~

61 ~~(b) The governor shall designate one member of the~~
62 ~~commission as its chair. Vacancies in the membership of the~~
63 ~~commission shall be filled in the same manner as the original~~
64 ~~appointments.~~

65 ~~(c) Each constitution revision commission shall convene at~~
66 ~~the call of its chair, adopt its rules of procedure, examine the~~
67 ~~constitution of the state, hold public hearings, and, not later~~
68 ~~than one hundred eighty days prior to the next general election,~~
69 ~~file with the custodian of state records its proposal, if any,~~
70 ~~of a revision of this constitution or any part of it.~~

71 SECTION 5. Amendment or revision election.-

72 (a) A proposed amendment to or revision of this
73 constitution, or any part of it, shall be submitted to the
74 electors at the next general election held more than ninety days
75 after the joint resolution or report of the revision commission,
76 ~~constitutional convention or taxation and budget reform~~
77 ~~commission~~ proposing it is filed with the custodian of state
78 records, unless, pursuant to law enacted by the affirmative vote
79 of three-fourths of the membership of each house of the
80 legislature and limited to a single amendment or revision, it is
81 submitted at an earlier special election held more than ninety
82 days after such filing.

83 (b) A proposed amendment or revision of this constitution,
84 or any part of it, by initiative shall be submitted to the
85 electors at the general election provided the initiative
86 petition is filed with the custodian of state records no later
87 than February 1 of the year in which the general election is

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88 held.

89 (c) The legislature shall provide by general law, prior to
90 the holding of an election pursuant to this section, for the
91 provision of a statement to the public regarding the probable
92 financial impact of any amendment proposed by initiative
93 pursuant to section 3.

94 (d) Once in the tenth week, and once in the sixth week
95 immediately preceding the week in which the election is held,
96 the proposed amendment or revision, with notice of the date of
97 election at which it will be submitted to the electors, shall be
98 published in one newspaper of general circulation in each county
99 in which a newspaper is published.

100 (e) Unless otherwise specifically provided for elsewhere in
101 this constitution, if the proposed amendment or revision is
102 approved by vote of at least sixty percent of the electors
103 voting on the measure, it shall be effective as an amendment to
104 or revision of the constitution of the state on the first
105 Tuesday after the first Monday in January following the
106 election, or on such other date as may be specified in the
107 amendment or revision.

108 ~~SECTION 6. Taxation and budget reform commission.-~~

109 ~~(a) Beginning in 2007 and each twentieth year thereafter,~~
110 ~~there shall be established a taxation and budget reform~~
111 ~~commission composed of the following members:~~

112 ~~(1) eleven members selected by the governor, none of whom~~
113 ~~shall be a member of the legislature at the time of appointment.~~

114 ~~(2) seven members selected by the speaker of the house of~~
115 ~~representatives and seven members selected by the president of~~
116 ~~the senate, none of whom shall be a member of the legislature at~~

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117 ~~the time of appointment.~~

118 ~~(3) four non voting ex officio members, all of whom shall~~
 119 ~~be members of the legislature at the time of appointment. Two of~~
 120 ~~these members, one of whom shall be a member of the minority~~
 121 ~~party in the house of representatives, shall be selected by the~~
 122 ~~speaker of the house of representatives, and two of these~~
 123 ~~members, one of whom shall be a member of the minority party in~~
 124 ~~the senate, shall be selected by the president of the senate.~~

125 ~~(b) Vacancies in the membership of the commission shall be~~
 126 ~~filled in the same manner as the original appointments.~~

127 ~~(c) At its initial meeting, the members of the commission~~
 128 ~~shall elect a member who is not a member of the legislature to~~
 129 ~~serve as chair and the commission shall adopt its rules of~~
 130 ~~procedure. Thereafter, the commission shall convene at the call~~
 131 ~~of the chair. An affirmative vote of two thirds of the full~~
 132 ~~commission shall be necessary for any revision of this~~
 133 ~~constitution or any part of it to be proposed by the commission.~~

134 ~~(d) The commission shall examine the state budgetary~~
 135 ~~process, the revenue needs and expenditure processes of the~~
 136 ~~state, the appropriateness of the tax structure of the state,~~
 137 ~~and governmental productivity and efficiency; review policy as~~
 138 ~~it relates to the ability of state and local government to tax~~
 139 ~~and adequately fund governmental operations and capital~~
 140 ~~facilities required to meet the state's needs during the next~~
 141 ~~twenty year period; determine methods favored by the citizens of~~
 142 ~~the state to fund the needs of the state, including alternative~~
 143 ~~methods for raising sufficient revenues for the needs of the~~
 144 ~~state; determine measures that could be instituted to~~
 145 ~~effectively gather funds from existing tax sources; examine~~

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146 ~~constitutional limitations on taxation and expenditures at the~~
 147 ~~state and local level; and review the state's comprehensive~~
 148 ~~planning, budgeting and needs assessment processes to determine~~
 149 ~~whether the resulting information adequately supports a~~
 150 ~~strategic decisionmaking process.~~

151 ~~(e) The commission shall hold public hearings as it deems~~
 152 ~~necessary to carry out its responsibilities under this section.~~
 153 ~~The commission shall issue a report of the results of the review~~
 154 ~~carried out, and propose to the legislature any recommended~~
 155 ~~statutory changes related to the taxation or budgetary laws of~~
 156 ~~the state. Not later than one hundred eighty days prior to the~~
 157 ~~general election in the second year following the year in which~~
 158 ~~the commission is established, the commission shall file with~~
 159 ~~the custodian of state records its proposal, if any, of a~~
 160 ~~revision of this constitution or any part of it dealing with~~
 161 ~~taxation or the state budgetary process.~~

162 BE IT FURTHER RESOLVED that the following statement be
 163 placed on the ballot:

164 CONSTITUTIONAL AMENDMENT

165 ARTICLE II, SECTION 5

166 ARTICLE XI, SECTIONS 2, 5, AND 6

167 CONSTITUTION REVISION COMMISSION AND TAXATION AND BUDGET
 168 REFORM COMMISSION.—This proposed amendment to the State
 169 Constitution abolishes the Constitution Revision Commission and
 170 the Taxation and Budget Reform Commission, which are authorized
 171 to propose amendments or revisions to the State Constitution.
 172 Members of the commissions are not elected by the people, but
 173 are appointed by the Governor, the President of the Florida
 174 Senate, and the Speaker of the Florida House of Representatives.

28-00012B-12

2012108__

175 With respect to the Constitution Revision Commission, members
176 are also appointed by the Chief Justice of the Florida Supreme
177 Court.

178 The State Constitution currently provides for these
179 commissions to come into existence at 20-year intervals. The
180 next Constitution Revision Commission is scheduled to convene in
181 2017, and the next Taxation and Budget Reform Commission is
182 scheduled to convene in 2027.

183 This amendment does not affect the power of the people to
184 propose initiatives to revise or amend the State Constitution or
185 to call a constitutional convention or the power of the
186 Legislature to propose amendments or revisions to the State
187 Constitution.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 9 / 2012

Meeting Date

Topic _____

Bill Number 108
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE 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
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/CS/SB 370

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senator Wise

SUBJECT: Supervised Visitation and Exchange Monitoring

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Fav/CS
2.	Munroe	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates a hierarchy for referring cases for supervised visitation or exchange monitoring for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies.

Additionally, the bill:

- Provides standards for supervised visitation or exchange programs to follow and requires that the programs affirm annually in a written agreement with court that they abide by those standards;
- Provides that programs that have accepted referrals may petition the court in writing when there is a problem with a case;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program;
- Creates a presumption that persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and makes such persons acting in good faith immune from civil and criminal liability; and

- Provides that after January 1, 2013, only programs that have written agreements with the court may receive state funding.

This bill creates the following sections of the Florida Statutes: 753.06, 753.07, and 753.08.

II. Present Situation:

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases where the child has been removed from the home. Other purposes of supervised visitation include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Facilitating appropriate child-parent interaction during supervised contact;
- Helping to build safe and healthy relationships between parents and children;
- Providing written factual information to the court relating to supervised contact, where appropriate;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.¹

The first supervised visitation program in Florida opened in 1993.² By 1996, there were 15 programs in the state, and by 2004, over 60 programs had been established. Currently, there are more than 70 programs statewide and every judicial circuit in the state has at least one supervised visitation program.³

The Clearinghouse on Supervised Visitation (clearinghouse)⁴ was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department).⁵ Since 1996, the clearinghouse has received contracts on an annual basis from the

¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Purposes of Supervised Visitation, available at <http://familyvio.csw.fsu.edu/CHVPG.php>. (last visited Feb. 2, 2012).

² The Family Nurturing Center of Jacksonville.

³ Karen Oehme and Sharon Maxwell, Florida's Supervised Visitation Programs: The Next Phase, 78 FLA. B.J. 44, 44 (Jan. 2004); See list of programs on the website of Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, available at <http://dev.familyvio.csw.fsu.edu/clearinghouse/fl-programs/> (last visited Feb. 2, 2012).

⁴ The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the College of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research, available at <http://familyvio.csw.fsu.edu/CHV.php> (last visited Feb. 2, 2012).

⁵ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Report to the Legislature: Recommendations of the Supervised Visitation Standards Committee (Dec. 2008), available at http://familyvio.csw.fsu.edu/messageboard/wordpress/wp-content/uploads/2010/03/Final_Report_to_Legislature.pdf (last visited Feb. 2, 2012)

department to continue this provision of technical assistance.⁶ Chapter 753, F.S., relating to supervised visitation, was created in 1996.⁷

The Florida Supreme Court's Family Court Steering Committee (committee) began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to the Court. The Court endorsed the minimum standards and issued an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases to programs that agreed to comply with the standards.⁸

In 2007, the Florida Legislature created s. 753.03 F.S., to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.⁹ Section 753.03, F.S., required the clearinghouse to recommend a process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.¹⁰ A final report containing the recommendations of the clearinghouse was received by the legislature in December 2008.¹¹

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Florida Supreme Court on November 17, 1999.¹² In 1999, the chief justice requested that the legislature develop security protocols, certify programs, and monitor them to ensure compliance. Specifically, the chief justice told the Speaker of the House of Representatives and the President of the Senate:

The lack of guidelines or standards for these programs and lack of oversight of these programs, particularly as to staff and visitor safety and staff training, is of great concern It does not appear that this is an appropriate function for the chief judge, but, rather, is better suited to an executive branch agency I urge the legislature to consider establishing a certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs.¹³

⁶ *Id.*

⁷ Chapter 96-402, Laws of Florida.

⁸ Oehme and Maxwell, *supra* note 3, at 44; *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012).

http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf.

⁹ Chapter 2007-109, Laws of Florida.

¹⁰ Section 8, chapter 2007-109, Laws of Florida.

¹¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, *supra* note 5.

¹² Chapter 2007-109, Laws of Florida. *See also* In re: Supervised Visitation, Admin. Order No. AOSC99-59 Fla. Nov. 18, 2011, available at: <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf> (last visited Feb. 2, 2012).

¹³ Oehme and Maxwell, *supra* note 3, at 47 (citations omitted).

III. Effect of Proposed Changes:

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., are the state standards for supervised visitation and exchange monitoring programs.

The bill also implements four out of the 10 recommendations contained in the final report to the Legislature from the clearinghouse, which was designated in 2007 to develop new standards for Florida supervised visitation programs. Specifically:

- Chapter 753, F.S., is amended to allow programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address these problems. Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:
 - Children's unwillingness to participate in visits;
 - Parental substance abuse;
 - Parental mental illness issues interfering with visits;
 - Parental misconduct on-site;
 - Parental misconduct off-site reported to visitation staff, including but not limited to, parental arrests, additional litigation in family, dependency, or criminal court, and violations of probation, stalking, and threats; and
 - Parental noncompliance with program rules, including no-shows and cancellations without cause.
- Courts and child-placing agencies are required to adhere to a recommended hierarchy when referring cases to supervised visitation in both dependency and non-dependency cases.

Specifically:

In chs. 61 or 741, F.S., cases, the court is to direct referrals for supervised visitation or exchange monitoring as follows:

- A program that has a written agreement with the court;
- A local licensed mental health professional who has met specified conditions.

In ch. 39, F.S., cases, the child-placing agency is to direct referrals for supervised visitation or exchange monitoring as follows:

- If the agency having primary responsibility determines that there are safety risks present during parent-child contact, the agency shall direct parties to a program that has affirmed in writing that it adheres to the state standards.
- If there are no safety risks present, the child protective investigator or case manager may:
 - Supervise the parent-child contact him or herself;
 - Designate a foster parent or relative to supervise the parent-child visits.
- If a program that adheres to the state standards does not exist and the child protective investigator or case manager cannot supervise the visit or designate a foster parent or relative to supervise the visit, the agency having primary responsibility over the case may refer the case to other qualified staff within the agency to supervise.

- The agency having primary responsibility for the case may only refer the case to a subcontractor or other agency if the subcontractor or agency has reviewed or received training on the clearinghouse's supervised visitation programs.

A court is still permitted to allow a litigant's relatives or friends to supervise the visits if the court decides such supervision is safe.

- Chapter 753, F.S., is amended to create a presumption that any person providing services at a supervised visitation or exchange monitoring program, who has affirmed to the court that he or she is abiding by the state standards, is acting in good faith and is therefore immune from liability. This is similar to the immunity provision that currently protects Guardians ad Litem.¹⁴
- The bill restricts funding so that only programs, that affirm through a written agreement with the court that it abides by the standards, are eligible for state funding after January 1, 2013.

Additionally, the bill requires supervised visitation and supervised exchange programs to conduct a security background investigation on all volunteers and employees prior to hiring an employee or certifying a volunteer to serve. The security background investigation must include:

- Employment history checks;
- Checks of references;
- Local criminal history records checks through local law enforcement agencies; and
- Statewide criminal history record checks through the Florida Department of Law Enforcement (FDLE).

If requested, an employer must submit the personnel file of the employee or former employee who is the subject of the background investigation. The bill provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith.

The purpose of the security background investigation is to ensure that a person is not hired as an employee or certified as a volunteer of a supervised visitation or supervised exchange program if the person has:

- An arrest awaiting final disposition for;
- Been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; or
- Has been adjudicated delinquent and the record has not been sealed or expunged for any offense prohibited under s. 435.04, F.S.¹⁵

The bill provides that all employees hired or volunteers certified after July 1, 2012, must undergo a level 2 background screening.¹⁶ When analyzing the information obtained in the security

¹⁴ Section 39.822(1), F.S.

¹⁵ Section 435.04, F.S., provides that all employees in positions of trust or responsibility must undergo a security background investigation, and the statute lists specific crimes that the employee undergoing the investigation must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty.

¹⁶ Section 435.04, F.S., provides the standards for level 2 background screenings.

background investigation, the supervised visitation or supervised exchange program must give particular emphasis to past activities involving children.

Finally, the bill provides that the supervised visitation or supervised exchange program has the sole discretion in determining whether to hire or certify a person based on the person's security background investigation.

The bill's requirement for a security background investigation is substantially similar to the background check requirement for guardians ad litem.¹⁷

The effective date of the bill is October 1, 2012.

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:

Article I, section 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” The test for assuring the right of access to the courts was established in *Kluger v. White*, in which the Florida Supreme Court held that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.¹⁸

Because the bill provides all persons responsible for providing services at a supervised visitation or exchange monitoring program who have affirmed that

¹⁷ See s. 39.821, F.S.

¹⁸ *Kluger v. White*, 281 So. 2d 1, 4 (1973).

they are abiding by the state standards immunity, it raises questions about possible infringements on the right of access to the courts. A parent may argue that the limitation denies the person his or her access to courts if the service provider acts negligently. To the extent that such a tort action may be pursued under Florida law, the immunity provision would have to meet the constitutional test established in *Kluger v. White*. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.¹⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department reports a potential fiscal impact for costs related to background screening if a supervised visitation program does not subcontract with DCF or a community-based care lead agency is possible. Programs contracting with DCF are already required to adhere to the background screening requirements under chapters 39, 409, and 435, F.S. Any program that does not meet specified standards by January 1, 2013, will be in jeopardy of losing state funding.²⁰

C. Government Sector Impact:

Proposed new section 753.07(3), F.S., provides that supervised visitation programs may alert the court in writing if there are problems with referred cases and the court may set a hearing to address these problems. Any new hearings that occur as a result of the bill would have an effect on judicial workload, however, the number of instances in which this might occur is not known and therefore the anticipated affect on workload, if any, by this provision is also not known. According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal impact on the judiciary and court staff.²¹

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.²²

The department stated that according to the clearinghouse, the screenings are currently accessed through Volunteer and Employee Criminal History System and are the

¹⁹ *Id.*

²⁰ Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²¹ Office of the State Courts Administrator Judicial Impact Statement HB 557, November 21, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²² *Id.*

responsibility of the visitation centers. The bill provides the option for DCF to screen the results. With the current increase in screenings and staff reductions at DCF, the Background Screening Units would not be able to absorb a substantial increase in workload within existing resources.²³

The bill requires the department's approval of supervised visitation training materials for foster parents that "may" be developed by the clearinghouse. This review could be accomplished through existing resources such as the Quality Parenting Initiative.²⁴

Within existing funds of DCF, the advisory board established under s. 753.03, F.S., developed supervised visitation standards. Newly proposed s. 753.06, F.S., will give the advisory board the authority to modify the standards, but does not obligate DCF funding for this purpose.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that supervised visitation and supervised exchange programs conduct security background investigations on employees or volunteers prior to hiring or certifying them. The language in the bill is substantially similar to the background check requirement for guardians ad litem found in s. 39.821, F.S. However, s. 39.821, F.S., provides that the information collected on a guardian ad litem pursuant to the background security investigation is confidential and exempt under Florida's public records law. The bill does not provide the same confidential and exempt language for the information collected on employees or volunteers of supervised visitation or supervised exchange programs. To the extent that supervised visitation and supervised exchange programs may be subject to Florida's constitutional and statutory public records requirements, the Legislature may wish to explore whether they would need a similar public records exemption.

VIII. Additional Information:

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

CS/CS by Judiciary on February 9, 2012:

The committee substitute provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., be the state standards for supervised visitation and exchange monitoring programs. The committee substitute deletes provisions that authorize the advisory board of the Clearinghouse on Supervised Visitation to modify the state standards for supervised visitation and exchange

²³ Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁴ *Id.*

²⁵ *Id.*

monitoring programs. Additionally, the committee substitute clarifies that the immunity granted to a person who is providing supervised visitation or exchange monitoring services through a supervised visitation program only applies to a person who acts in good faith.

CS by Children, Families, and Elder Affairs on January 25, 2012:

The committee substitute amends the original bill to require mental health professionals who supervise visitation to be licensed.

B. Amendments:

None.



837024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 51

and insert:

(1) The standards provided in the final report submitted to the Legislature pursuant to s. 753.03(4) shall be the state's standards for supervised visitation and exchange monitoring.

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

And the title is amended as follows:

Delete lines 5 - 7

and insert:

requiring each program to



253966

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Delete lines 209 - 212

and insert:

presumed, prima facie, to be acting in good faith. Such person
is immune from civil and criminal liability with regard to the
provision of such services.



319558

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 209 - 212

and insert:

presumed, prima facie, to be acting in good faith. Such persons acting in good faith are immune from civil and criminal liability with regard to the provision of the services.

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

And the title is amended as follows:

Delete lines 34 - 35

and insert:

program are presumed to act in good faith; providing



319558

14
15

that such persons acting in good faith are immune from
civil and criminal liability; providing an

By the Committee on Children, Families, and Elder Affairs; and
Senator Wise

586-02383-12

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1 A bill to be entitled
2 An act relating to supervised visitation and exchange
3 monitoring; creating s. 753.06, F.S.; adopting state
4 standards for supervised visitation programs;
5 providing for modification; requiring the standards to
6 be published on the website of the Clearinghouse on
7 Supervised Visitation; requiring each program to
8 annually affirm compliance with the standards to the
9 court; providing that after a specified date only
10 those programs that adhere to the state standards may
11 receive state funding; creating s. 753.07, F.S.;
12 providing factors for the court or child-placing
13 agency to consider when referring cases for supervised
14 visitation or exchange monitoring; specifying training
15 requirements for persons providing such services;
16 authorizing supervised visitation programs to alert
17 the court to problems with referred cases; creating s.
18 753.08, F.S.; requiring supervised visitation programs
19 to conduct security background checks of employees and
20 volunteers; providing requirements for such checks;
21 requiring that an employer furnish a copy of the
22 personnel record for the employee or former employee
23 upon request; providing immunity to employers who
24 provide information for purposes of a background
25 check; requiring that all applicants hired or
26 certified by a program after a specified date undergo
27 a level 2 background screening; delegating
28 responsibility for screening criminal history
29 information and for costs; authorizing a supervised

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

586-02383-12

2012370c1

30 visitation program to participate in the Volunteer and
31 Employee Criminal History System in order to obtain
32 criminal history information; providing that certain
33 persons providing services at a supervised visitation
34 program are presumed to act in good faith and are
35 immune from civil or criminal liability; providing an
36 effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Section 753.06, Florida Statutes, is created to
41 read:

42 753.06 Standards; funding limitations.-

43 (1) The standards announced in the final report submitted
44 to the Legislature pursuant to s. 753.03(4) shall be the basis
45 for the state's standards for supervised visitation and exchange
46 monitoring, and may be modified only by the advisory board
47 created under s. 753.03(2) after reasonable notice to the
48 programs, but not more often than annually. The clearinghouse
49 shall publish the standards, as modified, on its website. The
50 published standards shall be the state standards for supervised
51 visitation programs.

52 (2) Each supervised visitation program must annually affirm
53 in a written agreement with the court that it abides by the
54 standards. If the program has a contract with a child-placing
55 agency, that contract must include an affirmation that the
56 program complies with the standards. A copy of the agreement or
57 contract must be made available to any party upon request.

58 (3) On or after January 1, 2013, only a supervised

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

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59 visitation program that has affirmed in a written agreement with
 60 the court that it abides by and is in compliance with the state
 61 standards may receive state funding for supervised visitation or
 62 exchange monitoring services.

63 Section 2. Section 753.07, Florida Statutes, is created to
 64 read:

65 753.07 Referrals.—

66 (1) Courts and referring child-placing agencies must adhere
 67 to the following priorities when determining where to refer
 68 cases for supervised visitation or exchange monitoring:

69 (a) For cases that are filed under chapter 61 or chapter
 70 741 in which the courts are the primary source of referrals, the
 71 court shall direct referrals as follows:

72 1. The order must refer the parties to a supervised
 73 visitation program that has a written agreement with the court
 74 as provided in s. 753.06(2) if such a program exists in the
 75 community.

76 2. If a program does not exist, or if the existing program
 77 is not able to accept the referral for any reason, the court may
 78 refer the case to a local licensed mental health professional.
 79 Such professional is not required to abide by the state
 80 standards established in s. 753.06; however, the professional
 81 must affirm to the court in writing that he or she has completed
 82 the clearinghouse's free, online supervised visitation training
 83 program and has read and understands the state standards.

84 (b) In cases governed by chapter 39, the referring child-
 85 placing agency must adhere to the following:

86 1. The agency that has primary responsibility for the case
 87 must ensure that each family is assessed for problems that could

586-02383-12 2012370c1

88 present safety risks during parent-child contact. If risks are
 89 found, agency staff shall consider referring the parties to a
 90 local supervised visitation program that has affirmed in writing
 91 that it adheres to the state standards if such a program exists
 92 in the community.

93 2. If agency staff determines that there is no need for a
 94 supervised visitation, such program does not exist, or the
 95 existing program is unable to accept the referral for any
 96 reason, the child protective investigator or case manager who
 97 has primary responsibility for the case may:

98 a. Supervise the parent-child contact himself or herself.
 99 However, before a child protective investigator or case manager
 100 may supervise visits, he or she must review or receive training
 101 on the online training manual for the state's supervised
 102 visitation programs and affirm in writing to his or her own
 103 agency that he or she has received training on, or has reviewed
 104 and understands, the state standards.

105 b. Designate a foster parent or relative to supervise the
 106 parent-child visits in those cases that do not warrant the
 107 supervision of the child protective investigator or case
 108 manager. However, the designated foster parent or relative must
 109 first be apprised that the case manager conducted a safety
 110 assessment described in subparagraph 1., and must be provided
 111 access to free training material on the foster parent's or
 112 relative's role in supervised visitation. Such materials may be
 113 created by the clearinghouse using existing or new material and
 114 must be approved by the department. Such training may be
 115 included in any preservice foster parent training conducted by
 116 the agency.

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117 3. If a program does not exist, or if the existing program
 118 is unable to accept the referral and the child protective
 119 investigator or case manager is unable to supervise the parent-
 120 child contact or designate a foster parent or relative to
 121 supervise the visits as described in subparagraph 2., the agency
 122 that has primary responsibility for the case may refer the case
 123 to other qualified staff within that agency to supervise the
 124 contact. However, before such staff member may supervise any
 125 visits, he or she must review or receive training on the online
 126 training manual for supervised visitation programs and affirm in
 127 writing to his or her own agency that he or she has received
 128 training on, or has reviewed and understands, the training
 129 manual and the state standards.

130 4. The agency that has primary responsibility for the case
 131 may not refer the case to a subcontractor or other agency to
 132 perform the supervised visitation unless that subcontractor's or
 133 other agency's child protective investigators or case managers
 134 who supervise onsite or offsite visits have reviewed or received
 135 training on the clearinghouse's online training manual for
 136 supervised visitation programs and affirm to their own agency
 137 that they have received training on, or have reviewed and
 138 understand, the training manual and the state standards.

139 (2) This section does not prohibit the court from allowing
 140 a litigant's relatives or friends to supervise visits if the
 141 court determines that such supervision is safe. However, such
 142 informal supervisors must be made aware of the free online
 143 clearinghouse materials that they may voluntarily choose to
 144 review. These materials must provide information that helps
 145 educate the informal supervisors about the inherent risks and

586-02383-12

2012370c1

146 complicated dynamics of supervised visitation.

147 (3) Supervised visitation programs may alert the court in
 148 writing if there are problems with referred cases and the court
 149 may set a hearing to address these problems.

150 Section 3. Section 753.08, Florida Statutes, is created to
 151 read:

152 753.08 Security background checks; immunity.—

153 (1) Because of the special trust or responsibility placed
 154 on volunteers and employees of supervised visitation programs,
 155 such program must conduct a security background investigation
 156 before hiring an employee or certifying a volunteer.

157 (a) A security background investigation must include, but
 158 need not be limited to, employment history checks, reference
 159 checks, local criminal history records checks through local law
 160 enforcement agencies, and statewide criminal history records
 161 checks through the Department of Law Enforcement.

162 (b) Upon request, an employer shall furnish a copy of the
 163 personnel record for the employee or former employee who is the
 164 subject of a security background investigation. The information
 165 contained in the record may include, but need not be limited to,
 166 disciplinary matters and the reason the employee was terminated
 167 from employment, if applicable. An employer who releases a
 168 personnel record for purposes of a security background
 169 investigation is presumed to have acted in good faith and is not
 170 liable for information contained in the record without a showing
 171 that the employer maliciously falsified the record.

172 (c) All employees hired or volunteers certified on or after
 173 October 1, 2012, must undergo a state and national criminal
 174 history record check. Supervised visitation programs shall

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175 contract with the department, the court administrator, or the
 176 clerk of court to conduct level 2 background checks under
 177 chapter 435. The cost for the fingerprint processing may be
 178 borne by the program or the person subject to the background
 179 check. The department, court administrator, or clerk of court
 180 shall screen the criminal history results to determine if an
 181 applicant meets the minimum requirements and is responsible for
 182 payment to the Department of Law Enforcement by invoice to the
 183 department, the court administrator, or the clerk of court or
 184 via payment from a credit card by the applicant or a vendor on
 185 behalf of the applicant. If the department, court administrator,
 186 or clerk of court is unable to conduct the background check, the
 187 supervised visitation program may participate in the Volunteer
 188 and Employee Criminal History System, as authorized by the
 189 National Child Protection Act of 1993 and s. 943.0542, to obtain
 190 criminal history information.

191 (d) The security background investigation must ensure that
 192 a person is not hired as an employee or certified as a volunteer
 193 if the person has an arrest awaiting final disposition for, has
 194 been convicted of, regardless of adjudication, has entered a
 195 plea of nolo contendere or guilty to, or has been adjudicated
 196 delinquent and the record has not been sealed or expunged for,
 197 any offense prohibited under s. 435.04(2).

198 (e) In analyzing and evaluating the information obtained in
 199 the security background investigation, the program must give
 200 particular emphasis to past activities involving children,
 201 including, but not limited to, child-related criminal offenses
 202 or child abuse. The program has sole discretion in determining
 203 whether to hire or certify a person based on his or her security

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204 background investigation.

205 (2) Any person who is providing supervised visitation or
 206 exchange monitoring services through a supervised visitation
 207 program and who affirms to the court in writing that he or she
 208 abides by the state standards described in s. 753.06 is
 209 presumed, prima facie, to be acting in good faith and is immune
 210 from any liability, civil or criminal, which otherwise might be
 211 incurred or imposed with regard to the provision of such
 212 services.

213 Section 4. This act shall take effect October 1, 2012.

Page 8 of 8

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/09/2012
Meeting Date

Topic Supervised Visitation Bill Number 370
(if applicable)

Name Karen Oehme Amendment Barcode _____
(if applicable)

Job Title Director, Institute for Family

Address Violence Studies Phone 644-6303 (x1)

Street FSU State FL Zip 32306-2570 Email KOehme@fsu.edu
City

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 462

INTRODUCER: Judiciary Committee and Senator Bogdanoff

SUBJECT: Terms of Courts

DATE: February 13, 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:

This bill repeals multiple provisions related to the judiciary. The repealed provisions relate to:

- Regular terms of court for the Florida Supreme Court;
- Terms of the circuit courts;
- A judge’s attendance at the first day of a term;
- A judge’s stated reason for nonattendance;
- The penalty for nonattendance of a judge;
- Adjournment of court upon nonattendance of a judge;
- Calling the docket at end of a term;
- Requiring the clerk of circuit court, or his or her deputy clerk, to reside at the county seat or within two miles of the county seat;
- Term of the district courts of appeal;
- A requirement that criminal trials be heard in the term of court prior to civil cases; and
- A requirement that persons in custody be arraigned and tried in the term of court unless good cause is shown.

This bill repeals the following sections of the Florida Statutes: 25.051, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and 907.055.

This bill creates two provisions related to the Judiciary. Section 43.43, F.S., allows the Supreme Court to set terms of court for the Supreme Court, district courts of appeal, and circuit courts. Section 43.44, F.S., allows an appellate court to may withdraw a mandate within 120 days after its issuance.

This bill amends multiple statutes that currently use the language of terms of court. The changes consist of conforming provisions made to the following sections of the Florida Statutes: 26.46, 27.04, 30.12, 30.15, 34.13, 35.05, 38.23, 112.19, 206.215, 450.121, 831.10, 831.17, 877.08, 902.19, 903.32, 905.01, 905.09, 905.095, 914.03, 924.065, and 932.47.

II. Present Situation:

Article V of the Florida Constitution establishes the judicial branch of government, including prescribing the various courts in which the judicial power is vested. The Florida State Courts System consists of all officers, employees, and divisions of the entities noted below.¹

- The Supreme Court, the highest state appellate court, has seven justices and statewide jurisdiction. The Chief Justice is the administrator of the state courts system. The Court also regulates admission of lawyers to The Florida Bar and the discipline of judges and lawyers.
- The district courts of appeal, the state appellate courts, have jurisdiction within the limits of their five geographic districts and are served by approximately 61 judges.
- The circuit courts, the highest level trial court in each of the 20 judicial circuits, are served by approximately 599 judges. The circuit courts hear, for example, felony cases, family law matters, and civil cases in which the matter in controversy exceeds \$15,000.
- The county courts, the lowest level trial courts, having at least one judge in each county, are served by approximately 322 judges. The county courts hear, for example, misdemeanor cases, small claims cases, and civil cases in which the matter in controversy does not exceed \$15,000.

Terms of court were developed to ensure that circuit judges showed up to conduct court business in past times when riding the circuit involved traversing potentially difficult terrain from one county seat to the next.² Terms of court were required by the state constitution³ until Article V was substantially rewritten in 1957.

¹ Office of Program Policy Analysis and Government Accountability, Fla. Legislature, Government Program Summaries, *State Courts System* (last updated Dec. 30, 2011), <http://www.oppaga.state.fl.us/profiles/1072/> (last visited Jan. 29, 2012).

² See George S. Reynolds III, *The First One Hundred Years 1868-1968*, <http://www.leoncountyfl.gov/2ndcircuit/index.php?Page=FirstHundred.php> (describing the history of the Second Judicial Circuit, including how the terms of court provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service along the river) (last visited Dec. 8, 2011).

³ Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms."

Current law mandates a minimum of two terms of court for the Supreme Court, circuit courts, and district courts of appeal, each. Enacted in 1957, s. 25.051, F.S., requires the Supreme Court to hold two terms in each year, in the Supreme Court Building, commencing respectively on the first day of January and July, or the first day thereafter if that is a Sunday or holiday. Sections 26.21-26.365, F.S., require at least two regular terms of the circuit court to be held in each county each year and allow for special terms as needed. There is a separate statute for each of the 20 circuits which provides for the starting day of each term. Enacted in 1957, ss. 35.10 and 35.11, F.S., require the district courts of appeal to hold two regular terms each year at their headquarters and allow for special terms as needed. The regular terms of the district courts of appeal shall commence on the second Tuesday in January and July.

Today, terms of court seem an archaic concept. Circuit judges come and go from each of the counties as needed, and far more often than once every six months. Reference to terms of court is still relevant, however, for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate. Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court. In the appellate courts, the terms of court limit an appellate court's ability to withdraw a mandate,⁴ a rare procedure.

In addition to repealing statutes establishing the terms of court, this bill repeals a number of statutory provisions incidental to the terms of court concept. The present situation for the relevant provisions is discussed in the "Effect of Proposed Changes" section of this bill analysis, below.

III. Effect of Proposed Changes:

Repeal of Terms of Court

The bill repeals the statutes that set out the court system's regular and special terms of court. This includes the repeal of s. 25.051, F.S., requiring the Supreme Court to hold two terms in each year; ss. 26.21-26.365, F.S., requiring at least two regular terms of the circuit court to be held in each county each year and allowing for special terms as needed; and ss. 35.10 and 35.11, F.S., requiring the district courts of appeal to hold two regular terms each year and allowing for special terms as needed.

According to the Office of the State Courts Administrator (OSCA), a simple repeal of appellate terms of court would have the unintended consequences of "impair(ing) the ability of appellate courts to finalize cases," and "leav(ing) trial court chief judges without explicit authority to convene grand juries."⁵ However, proposed ss. 43.43 and 43.44, F.S., avoid these technical complications, in addition to establishing a uniform timeframe for withdrawal of a mandate by an appellate court.

⁴ A mandate is "[a]n order from an appellate court directing a lower court to take a specified action." Black's Law Dictionary (9th ed. 2009).

⁵ Fla. Office of the State Courts Administrator, *2011 Judicial Impact Statement: SB 1398*, Mar. 3, 2011 (on file with the Senate Committee on Judiciary).

Authorization of Florida Supreme Court over Terms

Section 9 creates s. 43.43, F.S., authorizing the Florida Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the Court wishes. Finalization of cases is addressed in this authorization of “the supreme court to establish, by rule, new terms of court, to authorize the district courts of appeal and circuit courts to independently set their own terms, or to dispense with terms of court altogether.”⁶

Convening Grand Juries

Present Situation: Section 905.01, F.S., currently permits circuit court chief judges to “dispense with the convening of grand juries by written order directing clerks of court not to summon jurors.”⁷

Effect of the Bill: Section 19 amends s. 905.01, F.S., addressing the authority to convene grand juries. Specifically, the bill requires circuit court chief judges to regularly order the convening of grand juries for terms of six months.

Timeframe for Withdrawal of Mandate by Appellate Court

Present Situation: Under current law, a mandate may only be withdrawn during the current term of the appellate court. In effect, some appellate court opinions are subject to withdrawal for nearly six months while others may be subject to withdrawal only for a few days. The Florida Supreme Court in 1932, explained the scope and limits of the power to withdraw:

But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.⁸

Effect of the Bill: Section 10 creates s. 43.44, F.S., which provides that an appellate court may withdraw a mandate for up to 120 days after it is filed with a lower court.

Repeal of Incidental Provisions

This bill repeals a number of statutory provisions incidental to the terms of court concept.

⁶ Fla. Office of the State Courts Administrator, *2012 Judicial Impact Statement: SB 462*, Oct. 27, 2011 (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630, 632 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

Judge to Attend First Day of Term

Present Situation: Initially enacted in 1849, s. 26.37, F.S., requires every judge of a circuit court, unless prevented by sickness or other providential causes, to attend the first day of each term of the circuit court. If the judge fails to attend, he or she is subject to a \$100 deduction from his or her salary.

Effect of the Bill: Section 1 repeals s. 26.37, F.S.

Judge's Reason for Nonattendance

Present Situation: Initially enacted in 1849, s. 26.38, F.S., requires a judge who misses the first day of each term to state the reasons for such failure in writing to be handed to the clerk of the court.

Effect of the Bill: Section 1 repeals s. 26.38, F.S.

Penalty for Nonattendance of Judge

Present Situation: Initially enacted in 1849, s. 26.39, F.S., requires the clerk of court to notify the Chief Financial Officer (CFO) of the state when a judge fails to attend the first day of the term of court. The CFO is then directed to deduct \$100 from the judge's pay for every such default.

Effect of the Bill: Section 1 repeals s. 26.39, F.S.

Adjournment of Court upon Nonattendance

Present Situation: Enacted in 1828, s. 26.40, F.S., requires that, whenever a judge does not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day. If the judge does not attend court at that time, the clerk must continue all causes and adjourn the court to such time as the judge may appoint or to the next regular term.

Effect of the Bill: Section 1 repeals s. 26.40, F.S.

Calling Docket at End of Term

Present Situation: Enacted in 1828, s. 26.42, F.S., requires a judge, after other court business of the term has been completed, to call the remaining cases on the docket and make such orders and entries as necessary.

Effect of the Bill: Section 1 repeals s. 26.42, F.S.

Order of Cases Tried in Circuit Court

Present Situation: Enacted in 1939, s. 907.05, F.S., requires that criminal trials be heard in the term of court prior to civil cases, if they can be tried without injury to the interests of the state or defendant.

Effect of the Bill: Section 1 repeals s. 907.05, F.S.

Trial of Persons in Custody

Present Situation: Enacted in 1939, s. 907.055, F.S., requires that persons in custody be arraigned and tried in the term of court when the indictment or information for a felony is filed, unless good cause is shown for a continuance.

Effect of the Bill: Section 1 repeals s. 907.055, F.S.

Conforming Provisions

This bill amends multiple statutes that currently use the language of terms of court. Sections 2-8 and 11-24 of the bill consist of conforming provisions made to the following sections of the Florida Statutes: 26.46, regarding jurisdiction of a resident judge; 27.04, regarding witnesses in a criminal case; 30.12, regarding the power to appoint a sheriff; 30.15, regarding powers, duties, and obligations of the sheriff; 34.13, regarding methods of prosecution; 35.05, regarding the headquarters of a district court of appeal; 38.23, regarding contempt of court; 112.19, regarding law enforcement officers; 206.215, regarding court costs; 450.121, regarding child labor law; 831.10, regarding forged bills; 831.17, regarding second or subsequent offenses for possession of counterfeit coins; 877.08, regarding coin-operated machines; 902.19, regarding when a prosecutor is liable for costs; 903.32, regarding defects in a criminal bond; 905.01, regarding grand jury terms; 905.09, regarding discharge and recall of a grand jury; 905.095, regarding extension of a grand jury term; 914.03, regarding attendance of witnesses; 924.065, regarding appearance bonds; and 932.47, F.S., regarding an information filed by a prosecuting attorney.

Effective Date

The bill provides an effective date of January 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that it is not expecting the bill to have an impact on court workload and “little effect on judicial time.”⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 9, 2012:**

The CS makes a technical change to clarify that appellate courts issue “opinions and orders.” The CS establishes a 6 month time period during which subsequent violations of certain counterfeiting laws will be subject to additional punishment. Additionally, the CS alters a requirement related to how long a witness in a criminal case must remain available for trial.

B. Amendments:

None.

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

⁹ Fla. Office of the State Courts Administrator, *supra* note 5.



365872

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 155 - 160

and insert:

its own opinions and orders for the purpose of making the same
accord with law and justice. Accordingly, an appellate court has
the power to recall its own mandate for the purpose of allowing
it to exercise such jurisdiction and power in a proper case. A
mandate may not be recalled more than 120 days after it is
issued.



603148

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment

Delete lines 155 - 160

and insert:

its own opinions and orders for the purpose of making the same accord with law and justice. Accordingly, an appellate court has the power to recall its own mandate for the purpose of allowing it to exercise such jurisdiction and power in a proper case. A mandate may not be recalled more than 120 days after it has been issued.



108620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment

Delete lines 203 - 217

and insert:

~~the like~~ offense committed after the former conviction, and on
~~whoever is at the same term of the court convicted upon three~~
distinct charges of such offense committed within a 6-month
period, shall be deemed a common utterer of counterfeit bills,
and shall be punished as provided in s. 775.084.

Section 15. Section 831.17, Florida Statutes, is amended to
read:

831.17 Violation of s. 831.16; second or subsequent



108620

14 conviction.-A person previously ~~Whoever having been~~ convicted of
15 violating either of the offenses mentioned in s. 831.16 ~~who,~~ is
16 again convicted of violating that statute ~~either of the same~~
17 ~~offenses,~~ committed after the former conviction on, ~~and whoever~~
18 ~~is at the same term of the court convicted upon~~ three distinct
19 charges of such offense committed within a 6-month period ~~said~~
20 ~~offenses,~~ commits a felony of the second degree, punishable as
21 provided in s. 775.082, s. 775.083, or s. 775.084.



673016

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment

Delete line 295
and insert:

criminal case shall remain available for attendance until the
case for which he or she was summoned is disposed of or until he
or she is excused by the

By Senator Bogdanoff

25-00256A-12

2012462__

1 A bill to be entitled
 2 An act relating to terms of courts; repealing s.
 3 25.051, F.S., relating to regular terms of the Supreme
 4 Court; repealing s. 26.21, F.S., relating to terms of
 5 the circuit courts; repealing s. 26.22, F.S., relating
 6 to terms of the First Judicial Circuit; repealing s.
 7 26.23, F.S., relating to terms of the Second Judicial
 8 Circuit; repealing s. 26.24, F.S., relating to terms
 9 of the Third Judicial Circuit; repealing s. 26.25,
 10 F.S., relating to terms of the Fourth Judicial
 11 Circuit; repealing s. 26.26, F.S., relating to terms
 12 of the Fifth Judicial Circuit; repealing s. 26.27,
 13 F.S., relating to terms of the Sixth Judicial Circuit;
 14 repealing s. 26.28, F.S., relating to terms of the
 15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
 16 relating to terms of the Eighth Judicial Circuit;
 17 repealing s. 26.30, F.S., relating to terms of the
 18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
 19 relating to terms of the Tenth Judicial Circuit;
 20 repealing s. 26.32, F.S., relating to terms of the
 21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
 22 relating to terms of the Twelfth Judicial Circuit;
 23 repealing s. 26.34, F.S., relating to terms of the
 24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
 25 relating to terms of the Fourteenth Judicial Circuit;
 26 repealing s. 26.36, F.S., relating to terms of the
 27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
 28 relating to terms of the Sixteenth Judicial Circuit;
 29 repealing s. 26.362, F.S., relating to terms of the

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2012462__

30 Seventeenth Judicial Circuit; repealing s. 26.363,
 31 F.S., relating to terms of the Eighteenth Judicial
 32 Circuit; repealing s. 26.364, F.S., relating to terms
 33 of the Nineteenth Judicial Circuit; repealing s.
 34 26.365, F.S., relating to terms of the Twentieth
 35 Judicial Circuit; repealing s. 26.37, F.S., relating
 36 to requiring a judge to attend the first day of each
 37 term of the circuit court; repealing s. 26.38, F.S.,
 38 relating to a requirement for a judge to state a
 39 reason for nonattendance; repealing s. 26.39, F.S.,
 40 relating to the penalty for nonattendance of the
 41 judge; repealing s. 26.40, F.S., relating to
 42 adjournment of the circuit court upon nonattendance of
 43 the judge; repealing s. 26.42, F.S., relating to
 44 calling all cases on the docket at the end of each
 45 term; repealing s. 35.10, F.S., relating to regular
 46 terms of the district courts of appeal; repealing s.
 47 35.11, F.S., relating to special terms of the district
 48 courts of appeal; repealing s. 907.05, F.S., relating
 49 to a requirement that criminal trials be heard in the
 50 term of court prior to civil cases; repealing s.
 51 907.055, F.S., relating to a requirement that persons
 52 in custody be arraigned and tried in the term of court
 53 unless good cause is shown; amending ss. 26.46, 27.04,
 54 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
 55 conforming provisions to changes made by the act;
 56 creating s. 43.43, F.S.; allowing the Supreme Court to
 57 set terms of court for the Supreme Court, district
 58 courts of appeal, and circuit courts; creating s.

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2012462__

59 43.44, F.S.; providing that appellate courts may
 60 withdraw a mandate within 120 days after its issuance;
 61 amending ss. 112.19, 206.215, 450.121, 831.10, 831.17,
 62 877.08, 902.19, 903.32, 905.01, 905.09, 905.095,
 63 914.03, 924.065, and 932.47, F.S.; conforming
 64 provisions to changes made by the act; providing an
 65 effective date.

66
 67 Be It Enacted by the Legislature of the State of Florida:

68
 69 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
 70 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
 71 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
 72 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
 73 907.055, Florida Statutes, are repealed.

74 Section 2. Section 26.46, Florida Statutes, is amended to
 75 read:

76 26.46 Jurisdiction of resident judge after assignment.—When
 77 a circuit judge is assigned to another circuit, none of the
 78 circuit judges in such other circuit shall, because of such
 79 assignment, be deprived of or affected in his or her
 80 jurisdiction other than to the extent essential so as not to
 81 conflict with the authority of the temporarily assigned circuit
 82 judge as to the particular case or cases or class of cases, ~~or~~
 83 ~~in presiding at the particular term or part of term named or~~
 84 ~~specified in the assignment.~~

85 Section 3. Section 27.04, Florida Statutes, is amended to
 86 read:

87 27.04 Summoning and examining witnesses for state.—The

Page 3 of 11

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2012462__

88 state attorney shall have summoned all witnesses required on
 89 behalf of the state; and he or she is allowed the process of his
 90 or her court to summon witnesses from throughout the state to
 91 appear before the state attorney ~~in or out of term time~~ at such
 92 convenient places in the state attorney's judicial circuit and
 93 at such convenient times as may be designated in the summons, to
 94 testify before him or her as to any violation of the law upon
 95 which they may be interrogated, and he or she is empowered to
 96 administer oaths to all witnesses summoned to testify by the
 97 process of his or her court or who may voluntarily appear before
 98 the state attorney to testify as to any violation or violations
 99 of the law.

100 Section 4. Section 30.12, Florida Statutes, is amended to
 101 read:

102 30.12 Power to appoint sheriff.—Whenever any sheriff in the
 103 state shall fail to attend, in person or by deputy, ~~any term of~~
 104 the circuit court or county court of the county, from sickness,
 105 death, or other cause, the judge attending said court may
 106 appoint an interim a sheriff, who shall assume all the
 107 responsibilities, perform all the duties, and receive the same
 108 compensation as if he or she had been duly appointed sheriff,
 109 for only the said term of ~~nonattendance court~~ and no longer.

110 Section 5. Paragraph (c) of subsection (1) of section
 111 30.15, Florida Statutes, is amended to read:

112 30.15 Powers, duties, and obligations.—

113 (1) Sheriffs, in their respective counties, in person or by
 114 deputy, shall:

115 (c) Attend all sessions ~~terms~~ of the circuit court and
 116 county court held in their counties.

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25-00256A-12

2012462

117 Section 6. Subsection (2) of section 34.13, Florida
118 Statutes, is amended to read:

119 34.13 Method of prosecution.—

120 (2) Upon the finding of indictments by the grand jury for
121 crimes cognizable by the county court, the clerk of the court,
122 without any order therefor, shall docket the same on the trial
123 docket of the county court ~~on or before the first day of its~~
124 ~~next succeeding term.~~

125 Section 7. Subsection (2) of section 35.05, Florida
126 Statutes, is amended to read:

127 35.05 Headquarters.—

128 (2) A district court of appeal may designate other
129 locations within its district as branch headquarters for the
130 conduct of the business of the court ~~in special or regular term~~
131 and as the official headquarters of its officers or employees
132 pursuant to s. 112.061.

133 Section 8. Section 38.23, Florida Statutes, is amended to
134 read:

135 38.23 ~~Contempt~~ ~~Contempts~~ defined.—A refusal to obey any
136 legal order, mandate or decree, made or given by any judge
137 ~~either in term time or in vacation~~ relative to any of the
138 business of ~~the said court~~, after due notice thereof, is shall
139 ~~be considered a contempt, punishable and punished~~ accordingly.
140 ~~But nothing said or written, or published, in vacation, to or of~~
141 ~~any judge, or of any decision made by a judge, shall in any case~~
142 ~~be construed to be a contempt.~~

143 Section 9. Section 43.43, Florida Statutes, is created to
144 read:

145 43.43 Terms of courts.—The Supreme Court may establish

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146 terms of court for the Supreme Court, the district courts of
147 appeal, and the circuit courts; may authorize district courts of
148 appeal and circuit courts to establish their own terms of court;
149 or may dispense with terms of court.

150 Section 10. Section 43.44, Florida Statutes, is created to
151 read:

152 43.44 Mandate of an appeals court.—An appellate court has
153 the jurisdiction and power, as the circumstances and justice of
154 the case may require, to reconsider, revise, reform, or modify
155 its own judgments for the purpose of making the same accord with
156 law and justice. Accordingly, an appellate court has the power
157 to recall its own mandate for the purpose of allowing it to
158 exercise such jurisdiction and power in a proper case. A mandate
159 may not be recalled more than 120 days after it is filed with
160 the lower tribunal.

161 Section 11. Paragraph (b) of subsection (1) of section
162 112.19, Florida Statutes, is amended to read:

163 112.19 Law enforcement, correctional, and correctional
164 probation officers; death benefits.—

165 (1) Whenever used in this section, the term:

166 (b) "Law enforcement, correctional, or correctional
167 probation officer" means any officer as defined in s. 943.10(14)
168 or employee of the state or any political subdivision of the
169 state, including any law enforcement officer, correctional
170 officer, correctional probation officer, state attorney
171 investigator, or public defender investigator, whose duties
172 require such officer or employee to investigate, pursue,
173 apprehend, arrest, transport, or maintain custody of persons who
174 are charged with, suspected of committing, or convicted of a

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 175 crime; and the term includes any member of a bomb disposal unit
 176 whose primary responsibility is the location, handling, and
 177 disposal of explosive devices. The term also includes any full-
 178 time officer or employee of the state or any political
 179 subdivision of the state, certified pursuant to chapter 943,
 180 whose duties require such officer to serve process or to attend
 181 a session ~~terms~~ of a circuit or county court as bailiff.

182 Section 12. Subsection (2) of section 206.215, Florida
 183 Statutes, is amended to read:

184 206.215 Costs and expenses of proceedings.—

185 (2) The clerks of the courts performing duties under the
 186 provisions aforesaid shall receive the same fees as prescribed
 187 by the general law for the performance of similar duties, and
 188 witnesses attending any investigation pursuant to subpoena shall
 189 receive the same mileage and per diem as if attending as a
 190 witness before the circuit court ~~in term time~~.

191 Section 13. Subsection (4) of section 450.121, Florida
 192 Statutes, is amended to read:

193 450.121 Enforcement of Child Labor Law.—

194 (4) Grand juries ~~shall~~ have inquisitorial powers to
 195 investigate violations of this chapter; also, trial court judges
 196 shall specially charge the grand jury, ~~at the beginning of each~~
 197 ~~term of the court~~, to investigate violations of this chapter.

198 Section 14. Section 831.10, Florida Statutes, is amended to
 199 read:

200 831.10 Second conviction of uttering forged bills.—A person
 201 previously ~~Whoever~~, ~~having been~~ convicted of violating the
 202 ~~offense mentioned in~~ s. 831.09 who is again convicted of that
 203 ~~the like offense is~~ committed after the former conviction, and

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 204 ~~whoever is at the same term of the court convicted upon three~~
 205 ~~distinct charges of such offense, shall be deemed~~ a common
 206 utterer of counterfeit bills, and shall be punished as provided
 207 in s. 775.084.

208 Section 15. Section 831.17, Florida Statutes, is amended to
 209 read:

210 831.17 Violation of s. 831.16; second or subsequent
 211 ~~conviction.—A person previously~~ ~~Whoever having been~~ convicted of
 212 violating either of the offenses mentioned in s. 831.16 ~~who~~, is
 213 again convicted of violating that statute either of the same
 214 ~~offenses, committed after the former conviction, and whoever is~~
 215 ~~at the same term of the court convicted upon three distinct~~
 216 ~~charges of said offenses~~, commits a felony of the second degree,
 217 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

218 Section 16. Subsection (4) of section 877.08, Florida
 219 Statutes, is amended to read:

220 877.08 Coin-operated vending machines and parking meters;
 221 defined; prohibited acts, penalties.—

222 (4) Whoever violates ~~the provisions of~~ subsection (3) a
 223 second or subsequent time commits, ~~and is convicted of such~~
 224 ~~second separate offense, either at the same term or a subsequent~~
 225 ~~term of court, shall be guilty of~~ a felony of the third degree,
 226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

227 Section 17. Subsection (1) of section 902.19, Florida
 228 Statutes, is amended to read:

229 902.19 When prosecutor liable for costs.—

230 (1) If ~~When~~ a person makes a complaint before a county
 231 court judge that a crime has been committed and is recognized by
 232 the county court judge to appear before ~~at the next term of the~~

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233 court having jurisdiction to give evidence of the crime and
 234 fails to appear, the person ~~is shall be~~ liable for all costs
 235 occasioned by his or her complaint, and the county court judge
 236 may ~~enter obtain~~ a judgment and execution for the costs as in
 237 other cases.

238 Section 18. Subsection (2) of section 903.32, Florida
 239 Statutes, is amended to read:

240 903.32 Defects in bond.—

241 (2) If no day, or an impossible day, is stated in a bond
 242 for the defendant's appearance before a trial court judge for a
 243 hearing or trial, the defendant shall be bound to appear 10 days
 244 after receipt of notice to appear by the defendant, the
 245 defendant's counsel, or any surety on the undertaking. ~~If no~~
 246 ~~day, or an impossible day, is stated in a bond for the~~
 247 ~~defendant's appearance for trial, the defendant shall be bound~~
 248 ~~to appear on the first day of the next term of court that will~~
 249 ~~commence more than 3 days after the undertaking is given.~~

250 Section 19. Section 905.01, Florida Statutes, is amended to
 251 read:

252 905.01 Number and procurement of grand jury; replacement of
 253 member; term of grand jury.—

254 (1) The grand jury shall consist of not fewer than 15 nor
 255 more than 21 persons. The provisions of law governing the
 256 qualifications, disqualifications, excusals, drawing, summoning,
 257 supplying deficiencies, compensation, and procurement of petit
 258 jurors apply to grand jurors. In addition, an elected public
 259 official is not eligible for service on a grand jury.

260 (2) The chief judge of any circuit court may provide for
 261 the replacement of any grand juror who, for good cause, is

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262 unable to complete the term of the grand jury. Such replacement
 263 shall be made by appropriate order of the chief judge from the
 264 list of prospective jurors from which the grand juror to be
 265 replaced was selected.

266 (3) The chief judge of each any circuit court shall
 267 regularly order ~~may dispense with~~ the convening of the grand
 268 jury for a at any term of 6 months ~~court by filing a written~~
 269 ~~order with the clerk of court directing that a grand jury not be~~
 270 ~~summoned.~~

271 Section 20. Section 905.09, Florida Statutes, is amended to
 272 read:

273 905.09 Discharge and recall of grand jury.—A grand jury
 274 that has been dismissed may be recalled at any time during the
 275 same term of the grand jury court.

276 Section 21. Section 905.095, Florida Statutes, is amended
 277 to read:

278 905.095 Extension of grand jury term.—Upon petition of the
 279 state attorney or the foreperson of the grand jury acting on
 280 behalf of a majority of the grand jurors, the circuit court may
 281 extend the term of a grand jury impaneled under this chapter
 282 beyond the term ~~of court~~ in which it was originally impaneled. A
 283 grand jury whose term has been extended as provided herein shall
 284 have the same composition and the same powers and duties it had
 285 during its original term. If in the event the term of the grand
 286 jury is extended under this section, it shall be extended for a
 287 time certain, not to exceed a total of 90 days, and only for the
 288 purpose of concluding one or more specified investigative
 289 matters initiated during its original term.

290 Section 22. Section 914.03, Florida Statutes, is amended to

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291 read:

292 914.03 Attendance of witnesses.—A witness summoned by a
293 grand jury ~~or in a criminal case~~ shall remain in attendance
294 until excused by the grand jury. A witness summoned in a
295 criminal case shall remain in attendance until excused by the
296 court. A witness who departs without permission of the court
297 shall be in criminal contempt of court. ~~A witness shall attend~~
298 ~~each succeeding term of court until the case is terminated.~~

299 Section 23. Subsection (2) of section 924.065, Florida
300 Statutes, is amended to read:

301 924.065 Denial of motion for new trial or arrest of
302 judgment; appeal bond; supersedeas.—

303 (2) An appeal may ~~shall~~ not be a supersedeas to the
304 execution of the judgment, sentence, or order until the
305 appellant has entered into a bond with at least two sureties to
306 secure the payment of the judgment, fine, and any future costs
307 that may be adjudged by the appellate court. The bond shall be
308 conditioned on the appellant's personally answering and abiding
309 by the final order, sentence, or judgment of the appellate court
310 and, if the action is remanded, on the appellant's appearing
311 before ~~at the next term of~~ the court in which the case was
312 originally determined and not departing without leave of court.

313 Section 24. Section 932.47, Florida Statutes, is amended to
314 read:

315 932.47 Informations filed by prosecuting attorneys.—
316 Informations may be filed by the prosecuting attorney of the
317 circuit court with the clerk of the circuit court ~~in vacation or~~
318 ~~in term~~ without leave of the court first being obtained.

319 Section 25. This act shall take effect January 1, 2013.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1202

INTRODUCER: Judiciary Committee and Senator Bogdanoff

SUBJECT: Construction Liens and Bonds

DATE: February 13, 2012 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill increases the information that must be shared among parties involved in a construction project and increases the time periods within which construction liens may be recorded or claims against a payment bond may be made. Additionally, the bill:

- Establishes a uniform time period of 5 years to initiate an action to enforce a claim against a payment bond.
- Requires government entities to open sealed bids for public works projects at a public meeting.
- Simplifies procedures for a lessor to prohibit the attachment of liens to a parcel of property as the result of improvements to a leased premises by a tenant.
- Revises the methods by which notices and other documents relating to construction liens must be served.

This bill substantially amends the following sections of the Florida Statutes: 95.11, 255.05, 713.10, 713.13, 713.132, 713.16, 713.18, 713.22, and 713.23.

This bill creates section 255.0518, Florida Statutes.

II. Present Situation:

The law of this state evinces a longstanding public policy of ensuring that people who work on construction projects are paid for their work.¹ The current mechanisms for enforcing that policy are payment bonds under s. 255.05, F.S., and payment bonds and construction liens under part I of chapter 713, F.S.

Payment Bonds for Public Works Projects

Under s. 255.05, F.S., the contractor for the construction of a public building or public works project generally must guarantee the prompt payment of persons who furnish labor, services, or materials through the use of a payment bond.² A bond for a public works project must state on its first page:

the name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.³

The contractor must provide the bond to the public owner of the project and record it in the official records⁴ of the county in which the project is located.⁵ The public owner must provide a certified copy of the contract for the project and the bond upon request to a person who has furnished labor, services, or materials to the project. Such persons have a cause of action against the contractor or the surety⁶ providing the payment bond for the amounts due to the person.

A public entity may request the Department of Management Services to exempt a public works project from the requirements for a payment bond if the cost of the project is more than \$100,000 but does not exceed \$200,000.⁷ Contracts with the state for \$100,000 or less are exempt from requirement for a payment bond.⁸

A person or claimant who is not in privity⁹ with the contractor and who intends to secure a right to make a claim against a payment bond must take several steps. First, the claimant must furnish

¹ This public policy was manifest in article XVI, s. 22 of the Florida Constitution of 1885 which stated, “The Legislature shall provide for giving to mechanics and laborers an adequate lien on the subject matter of their labor.”

² Alternatives to a bond are authorized by s. 255.05(7), F.S., and may include cash, a money order, a certified check, a cashier’s check, or an irrevocable letter of credit.

³ Section 255.05(1)(a), F.S.

⁴ Section 255.05(1)(a), F.S., uses the term “public records.” That term, however, is usually used to describe government records that are subject to public inspection and copying. *See* chapter 119, F.S. Statutes usually direct a person to file an instrument for recording in the official records.

⁵ Section 255.05(1), F.S.

⁶ A “surety” is a “person who is primarily liable for paying another’s debt or performing another’s obligation.” BLACK’S LAW DICTIONARY (9th ed. 2009).

⁷ *Id.*

⁸ *Id.*

⁹ The concept of “privity of contract” refers to the “relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so.” BLACK’S LAW DICTIONARY (9th ed. 2009).

the contractor with a written notice that he or she intends to look to the bond for protection.¹⁰ This notice is often referred to as a notice to contractor. The notice to contractor must be submitted not later than 45 days after commencing to furnish services or materials. Second, the claimant must deliver a notice of nonpayment to the contractor and the surety not later than 90 days after the final furnishing of services or materials by the claimant.¹¹

Lastly, the claimant must generally initiate an action to recover payment from the contractor or the surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies.¹² A contractor may shorten the time for a claimant to initiate an action against a payment bond by recording a “notice of contest of claim against payment bond” in the official records and having the clerk of court mail a copy of the notice to the claimant.¹³ The claimant must initiate an action against the bond within 60 days after service of the notice or the claimant’s claim is extinguished.

Construction Liens and Bonds/Private Property

The mechanisms and procedures for a person to secure payment for furnishing labor, services, or materials to a construction project on private property are specified under part I of chapter 713, F.S. The mechanisms include payment bonds and the procedures to compel payment and are similar to the procedures specified for payment bonds on public works projects. However, in the absence of a payment bond, a person who furnishes labor, services, or materials “may place a lien on the property to which the work was furnished” and foreclose on the property if the property owner does not pay the outstanding debts to such person.¹⁴

Notice of Commencement and Notice of Termination

Before construction begins, a property owner or the owner’s authorized agent generally must file a notice of commencement for recording by the clerk of court in the official records.¹⁵ The notice of commencement must also be posted on the construction site. The notice of commencement must contain information describing: the real property on which the improvement will be located; a general description of the improvement; the name and address of the owner and contractor; information relating to a surety bond, if a bond applies; the contact information for the lender for the project; contact information designated by the owner upon whom notices may be served.¹⁶

“The notice of commencement gives constructive notice that claims of lien may be recorded and may take priority, in that, the lien shall attach and take priority as of the time of recordation of the notice of commencement.”¹⁷ If a notice of commencement is not filed, liens attach and take

¹⁰ Section 255.05(2)(a)2., F.S.

¹¹ *Id.*

¹² Section 255.05(10), F.S.

¹³ Section 255.05(2)(a)1., F.S.

¹⁴ Heather Howdeshell, *Didn’t My General Contractor Pay You? Subcontractor Construction Liens in Residential Construction Projects*, 61 FLA. L. REV. 151, 151 (Jan. 2009).

¹⁵ Section 713.13(1)(a), F.S.

¹⁶ Section 713.13(1)(a)1.-7., F.S.

¹⁷ *Napolitano v. Security First Federal Savings and Loan Ass’n.*, 553 So. 2d 948, 949-50 (Fla. 5th DCA 1988).

priority as of the time the lien is recorded.¹⁸ As such, a lender seeking to ensure that its loan takes priority over a construction lien has an incentive to record the loan before construction begins and before the notice of commencement is recorded.¹⁹

Under s. 713.132, F.S., an owner may terminate the effectiveness of a notice of commencement and prevent the attachment of construction liens by recording a notice of termination. The notice of termination must contain the same information that must be contained in a notice of commencement and other statements including a statement that all lienors have been paid in full. However, the notice of termination must be served on each lienor who served a notice to owner.²⁰ The notice of termination may take effect as early as 30 days after it is recorded.²¹

Construction Liens

Under part I of chapter 713, F.S., a person who is not in privity with the owner (subcontractor) and intends to secure the right to claim a lien against the property must take several steps. First, if a payment bond does not apply, the subcontractor must serve a notice to owner setting forth the person's name and address and the nature of the services or materials furnished or to be furnished to the owner's property.²² The notice to owner must be served no later than 45 days after the subcontractor begins furnishing labor, services, or materials.²³

Once the owner receives a notice to owner, the owner must receive a release of lien from that subcontractor before paying the contractor.²⁴ Otherwise, a payment to the contractor may constitute an improper payment and the owner is liable to the subcontractor if the subcontractor is not paid by the contractor.²⁵

After a subcontractor provides a notice to owner, the subcontractor may record a claim of lien against the owner's property "at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials" by the subcontractor.²⁶

Payment Bonds for Construction Projects on Private Property

A property owner's property is exempt from construction liens if the contractor provides a payment bond to guarantee the payment of subcontractors.²⁷ The procedures under s. 255.05, F.S., for a subcontractor who does not have a direct contract with the contractor and intends to

¹⁸ Section 713.07(2), F.S.

¹⁹ *See Napolitano*, at 949-50.

²⁰ Section 713.132(1)(f) and (4), F.S. Paragraph (1)(f) and subsection (4) of s. 713.132 are inconsistent. Paragraph (1)(f) suggests that the owner need only serve a notice of termination on each lienor who served a notice to owner. Subsection (4) suggests that the notice of termination must also be served on the contractor.

²¹ Section 713.13(4), F.S.

²² Section 713.06(2)(a), F.S.

²³ *Id.*

²⁴ Section 713.13(2)(c), F.S.

²⁵ *See id.*

²⁶ Section 713.08 (5), F.S.

²⁷ Section 713.23, F.S.

secure the right to payment under a payment bond are similar to the steps required under part I of chapter 713, F.S.

First, the subcontractor must provide a notice to contractor within 45 days after beginning to furnish labor, materials, or supplies.²⁸ However, that time period is extended to 45 days after the subcontractor is notified in writing of the existence of the payment bond if the notice of commencement is not recorded or if the notice of commencement does not contain a reference to the bond.²⁹ Second, the subcontractor must serve a notice of nonpayment on the contractor and the surety not later than 90 days after the final furnishing of labor, services, or materials.³⁰ Lastly, an action against the contractor or surety must generally be commenced within 1 year after the completion of the delivery of the materials and supplies.³¹ However, the contractor may shorten the time within which a claim against the payment bond must be made by serving the lienor with a notice contesting the claim against the payment bond.³² The lienor must initiate an action against the bond within 60 days after service of the notice or the lienor's claim is extinguished.

Demands for an Accounting

Section 713.16, F.S., specifies procedures that allow owners, contractors, and subcontractors to demand an accounting of each other.³³ Owners and contractors who have provided a payment bond may serve a demand on a lienor for a written statement of account under oath showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor.³⁴ Similarly, a lienor may demand that an owner provide a written statement under oath showing the amount of the direct contract, the dates and amounts paid or to be paid under the contract, the estimated cost to complete the direct contract, and the actual cost to complete the contract, if known.³⁵

Manner of Serving Notices

Section 255.05, F.S., and part I of chapter 713, F.S., use inconsistent terminology to describe how a notice must be transmitted from one person to another. For example, in describing how a notice of nonpayment must be provided under s. 255.05(2)(a)1., F.S., the statute provides in one sentence that a claimant shall "deliver" the notice to the contractor. However, the next sentence provides that the notice must "be served."

Section 713.18, F.S., describes methods by which notices, claims of liens, affidavits, assignments, and other instruments may be served. Under that statute, notice may be accomplished by such methods as actual delivery, certified mail with evidence of delivery, and

²⁸ Section 713.23(1)(c), F.S.

²⁹ *Id.*

³⁰ Section 713.23(1)(d), F.S.

³¹ Section 713.23(1)(e), F.S.

³² *Id.*

³³ Similar procedures are available for public works projects under s. 255.05(8), F.S.

³⁴ Section 713.16(2) and (4), F.S.

³⁵ Section 713.16(5)(a), F.S.

posting the document on the job site. The permissible method of notice may be dictated by the circumstances.

Liens for Improvements by a Lessee on a Leased Premises

Section 713.10, F.S., allows construction liens to apply to a leased property for improvements made by a lessee (tenant). However, the statute allows the lessor (landlord) to take steps to prevent the attachment of liens for improvements by the tenants. Under s. 713.10(2), F.S., a lessor may prevent the attachment of a lien by prohibiting liens in the lease and by recording in the official records:

- The lease or a short form of the lease which contains the specific language of the lease which prohibits the attachment of liens; or³⁶
- A blanket notice for multiple leased premises on the same parcel, such as a strip mall, which provides notice that the attachment of liens is prohibited and which includes:
 - a. The name of the lessor.
 - b. The legal description of the parcel of land to which the notice applies.
 - c. The specific language contained in the various leases prohibiting such liability.
 - d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.³⁷

According to the Fourth District Court of Appeal:

A lessor can avail itself of the blanket notice provided for in subsection 713.10(2) only if, as the plain language of the statute states, “[a]ll of the leases entered into by a lessor . . . prohibit such liability” and the lessor files a notice containing “[t]he specific language contained in the various leases prohibiting such liability.”³⁸

Thus, a blanket notice advising that the leased premises on a parcel of property are not subject to liens, is ineffective to prohibit liens if the provisions of the leases prohibiting liens are not identical.

III. Effect of Proposed Changes:

The bill increases the information that must be shared among parties involved in a construction project and increases the time periods within which construction liens may be recorded or claims against a payment bond may be made. Additionally, the bill:

- Establishes a uniform time period of 5 years to initiate an action to enforce a claim against a payment bond.

³⁶ Section 713.10(2)(b)1., F.S.

³⁷ Section 713.10(2)(b)2., F.S.

³⁸ *Everglades Electric Supply, Inc., v. Paraiso Granite, LLC*, 28 So. 2d 235, 237-38 (Fla. 4th DCA 2010).

- Requires government entities to open sealed bids for public works projects at a public meeting.
- Simplifies procedures for a lessor to prohibit the attachment of liens to a parcel of property as the result of improvements to a leased premises by a tenant.
- Revises the methods by which notices and other documents relating to construction liens must be served.

Statute of Limitations for Actions to Enforce Claims Against Payment Bonds (Section 1)

The bill specifies that an action to enforce a claim against a payment bond relating to a construction or maintenance contract issued by the Department of Transportation must be brought within 5 years. The bill also increases the time period to 5 years from 1 year to bring an action to enforce a claim against payment bond on which the principal is a contractor. As a result, all actions to enforce a claim against a payment bond, whether the payment bond relates to a public works contract, construction or maintenance contract for the Department of Transportation, or other private construction, contract must be brought within 5 years.

Payment Bonds for Public Works Projects (Section 2)

The bill requires a payment and performance bond for a public works project to state the bond number assigned by the surety on its first page.

The bill extends the time periods within which a claimant must serve a notice to contractor or a notice of nonpayment, if a payment bond is not recorded before the commencement of construction. Under the bill, the time periods for serving a notice to contractor or a notice of nonpayment do not begin to run until the claimant is served a copy of the bond.

The bill also prohibits a public authority from requiring a contractor to produce releases from claimants as a condition of payments to the contractor if the contractor has recorded a payment bond.

Payment Bonds; Unenforceable Provisions (Sections 2 and 10)

Under the bill, the following provisions if contained in a payment bond are unenforceable:

- Provisions that limit or expands the effective duration of the bond; and
- Provisions that add conditions precedent to the enforcement of a claim against the bond which are not specified by statute.

Opening of Sealed Bids for Public Works Contracts (Section 3)

The bill provides that a state or local government entity “shall open sealed bids” for public works projects at a public meeting. As such, the bill appears to prohibit a governmental entity from opening sealed bids in advance of a public meeting. Although a governmental entity must open bids at a public meeting, the bill does not appear to impose a consequence, such as the invalidity of the bidding process, if bids are opened prematurely.

The bill also requires governmental entities to announce at the public meeting the name of each bidder and the price submitted and to make the name and price information available upon request. Under s. 119.071(1)(b), F.S., sealed bids are exempt from disclosure requirements under public records laws until “the agency provides notice of an intended decision or until 30 days after opening the bids . . . , whichever is earlier.” As a result of the public records exemption, the components of a sealed bid other than a bidder’s name and price submitted are likely to remain exempt from disclosure until the agency provides notice of an intended decision or for 30 days after the meeting at which the bids are opened, whichever is earlier.

Liens for Improvements by a Lessee on a Leased Premises (Section 4)

The bill amends s. 713.10(2), F.S., to provide that a blanket notice recorded in the official records which advises that liens may not attach to the leased premises on a parcel is effective even if the language of the specific leases prohibiting liens is not identical. This change to s. 713.10(2), F.S., effectively reverses the interpretation of that statute in *Everglades Electric Supply, Inc., v. Paraiso Granite, LLC*, 28 So. 2d 235, 237-38 (Fla. 4th DCA 2010).

Form of a Notice of Commencement (Section 5)

The bill revises s. 713.13, F.S., to delete requirements that the expiration of the notice of commencement be after the completion of construction and final payment to a contractor. The bill also deletes a provision requiring that the notice of commencement be made under penalty of perjury.

Information/Parties to a Construction Project on Private Property (Sections 6 and 7)

The bill amends section 713.132(1)(f) and (4), F.S., to require a property owner to serve a notice of termination on each lienor who has a direct contract with the owner or who has served a notice to owner as a prerequisite to the effectiveness of the notice of termination.

The bill amends section 713.16, F.S., to revise the information that must be provided when an owner or contractor makes a demand for a written statement of account to a lienor or when a lienor requests an accounting from an owner. Specifically, such demands served on the contractor or a lienor must include a description of the property and the names of the owner, the contractor, and the lienor’s customer. Similarly, a demand served on the owner must include a description of the property and the names of the contractor and the lienor’s customer.

Methods of Serving Notices and other Documents

The bill amends s. 713.18, F.S., to revise the methods by which notices and other documents relating to construction liens and claims against payment bonds may be served. The bill adds to the list of acceptable methods of serving notices which provide evidence of delivery to include global express guaranteed³⁹ and common carrier delivery services.

Section 713.18(2), F.S., is also amended to specify additional requirements for the manner in which a notice or other document must be served for the notice or other document to be effective

³⁹See United States Postal Service, *Global Express Guaranteed*, <https://www.usps.com/ship/gxg.htm>.

upon mailing. Specifically, in order for a notice to be effective on mailing, the notice must be mailed by registered, global express guaranteed, or certified mail with postage or shipping prepaid. Additionally, the sender may reformat an address to conform to postal standards. The sender may also complete an incomplete address shown on a notice of commencement based upon the address of the recipient shown in public records or another directory.

The bill also makes the requirements for serving notices consistent throughout the bill. For example, requirements to “deliver” or “mail” a notice are changed to “serve” in accordance with s. 713.18, F.S.

Service by Contractor Instead of Clerk of Court

Existing ss. 255.05(2)(a)1., F.S., requires a clerk of court to mail or serve notices contesting claims against payment bonds. Similarly, s. 713.23(1)(e) and (2), F.S., requires the clerk of court to serve notices. The bill requires the contractor or the contractor’s attorney or person recording a notice to serve the notice instead of the clerk of court.

Effective Date

The bill provides an effective date of October 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:

The bill may facilitate the imposition of construction liens and claims against payment bonds.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Article III, s. 6 of the State Constitution limits bills to one subject and requires the subject of a bill to be briefly expressed in its title. The title of CS/SB 1202 bill is an “An act relating to construction liens and bonds.” However, the bill also creates a new statute that requires a government entity to open sealed bids for public works projects at a public meeting. As such, the Legislature may wish to amend the short title of the bill to “An act relating to construction contracting.” to ensure that the title of the bill complies with the constitutional requirements.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on February 9, 2012:

- Establishes a uniform time period of 5 years to initiate an action to enforce a claim against a payment bond.
- Specifies that provisions of a payment bond are unenforceable which expand the duration of the bond or add conditions precedent to the enforcement of a claim against the bond which are not specified by law.
- Requires government entities to open sealed bids for public works projects at a public meeting.
- Simplifies procedures for a lessor to prohibit the attachment of liens as a result of improvements to a leased premises by a tenant.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) and (5) of section 95.11,
Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real
property.—Actions other than for recovery of real property shall
be commenced as follows:

(2) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of
record, of this state or any court of the United States, any



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14 other state or territory in the United States, or a foreign
15 country.

16 (b) A legal or equitable action on a contract, obligation,
17 or liability founded on a written instrument, except for an
18 action to enforce a claim against a payment bond, ~~which shall be~~
19 governed by the applicable provisions of s. ss. 255.05(10), s.
20 337.18(1), or s. and 713.23(1) (e).

21 (c) An action to foreclose a mortgage.

22 (d) An action alleging a willful violation of s. 448.110.

23 (e) Notwithstanding paragraph (b), an action for breach of
24 a property insurance contract, with the period running from the
25 date of loss.

26 (5) WITHIN ONE YEAR.—

27 (a) An action for specific performance of a contract.

28 (b) An action to enforce an equitable lien arising from the
29 furnishing of labor, services, or material for the improvement
30 of real property.

31 (c) An action to enforce rights under the Uniform
32 Commercial Code—Letters of Credit, chapter 675.

33 (d) An action against any guaranty association and its
34 insured, with the period running from the date of the deadline
35 for filing claims in the order of liquidation.

36 ~~(e) An action to enforce any claim against a payment bond~~
37 ~~on which the principal is a contractor, subcontractor, or sub-~~
38 ~~subcontractor as defined in s. 713.01, for private work as well~~
39 ~~as public work, from the last furnishing of labor, services, or~~
40 ~~materials or from the last furnishing of labor, services, or~~
41 ~~materials by the contractor if the contractor is the principal~~
42 ~~on a bond on the same construction project, whichever is later.~~



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43 (e)~~(f)~~ Except for actions described in subsection (8), a
44 petition for extraordinary writ, other than a petition
45 challenging a criminal conviction, filed by or on behalf of a
46 prisoner as defined in s. 57.085.

47 (f)~~(g)~~ Except for actions described in subsection (8), an
48 action brought by or on behalf of a prisoner, as defined in s.
49 57.085, relating to the conditions of the prisoner's
50 confinement.

51 Section 2. Section 255.05, Florida Statutes, is amended to
52 read:

53 255.05 Bond of contractor constructing public buildings;
54 form; action by claimants ~~materialmen~~.

55 (1) (a) A ~~Any~~ person entering into a formal contract with
56 the state or any county, city, or political subdivision thereof,
57 or other public authority or private entity, for the
58 construction of a public building, for the prosecution and
59 completion of a public work, or for repairs upon a public
60 building or public work shall be required, before commencing the
61 work or before recommencing the work after a default or
62 abandonment, to execute, deliver to the public owner, and record
63 in the public records of the county where the improvement is
64 located, a payment and performance bond with a surety insurer
65 authorized to do business in this state as surety. A public
66 entity may not require a contractor to secure a surety bond
67 under this section from a specific agent or bonding company. The
68 bond must state on its front page: the name, principal business
69 address, and phone number of the contractor, the surety, the
70 owner of the property being improved, and, if different from the
71 owner, the contracting public entity; the contract number



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72 assigned by the contracting public entity; the bond number
73 assigned by the surety; and a description of the project
74 sufficient to identify it, such as a legal description or the
75 street address of the property being improved, and a general
76 description of the improvement. The ~~Such~~ bond shall be
77 conditioned upon the contractor's performance of the
78 construction work in the time and manner prescribed in the
79 contract and promptly making payments to all persons defined in
80 s. 713.01 who furnish labor, services, or materials for the
81 prosecution of the work provided for in the contract. A ~~Any~~
82 claimant may apply to the governmental entity having charge of
83 the work for copies of the contract and bond and shall thereupon
84 be furnished with a certified copy of the contract and bond. The
85 claimant has ~~shall have~~ a right of action against the contractor
86 and surety for the amount due him or her, including unpaid
87 finance charges due under the claimant's contract. Such action
88 may ~~shall~~ not involve the public authority in any expense. When
89 the ~~such~~ work is done for the state and the contract is for
90 \$100,000 or less, no payment and performance bond shall be
91 required. At the discretion of the official or board awarding
92 such contract when such work is done for any county, city,
93 political subdivision, or public authority, a ~~any~~ person
94 entering into such a contract that ~~which~~ is for \$200,000 or less
95 may be exempted from executing the payment and performance bond.
96 When such work is done for the state, the Secretary of
97 Management Services may delegate to state agencies the authority
98 to exempt any person entering into such a contract amounting to
99 more than \$100,000 but less than \$200,000 from executing the
100 payment and performance bond. If an ~~In the event such~~ exemption



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101 is granted, the officer or officials is ~~shall~~ not ~~be~~ personally
102 liable to persons suffering loss because of granting such
103 exemption. The Department of Management Services shall maintain
104 information on the number of requests by state agencies for
105 delegation of authority to waive the bond requirements by agency
106 and project number and whether any request for delegation was
107 denied and the justification for the denial. Any provision in a
108 payment bond furnished for public work contracts as provided by
109 this subsection which further restricts the classes of persons
110 ~~as defined in s. 713.01~~ protected by the bond, which restricts
111 ~~or~~ the venue of any proceeding relating to such bond, which
112 limits or expands the effective duration of the bond, or which
113 adds conditions precedent to the enforcement of a claim against
114 the bond beyond those provided in this section is unenforceable.

115 (b) The Department of Management Services shall adopt rules
116 with respect to all contracts for \$200,000 or less, to provide:

117 1. Procedures for retaining up to 10 percent of each
118 request for payment submitted by a contractor and procedures for
119 determining disbursements from the amount retained on a pro rata
120 basis to laborers, materialmen, and subcontractors, as defined
121 in s. 713.01.

122 2. Procedures for requiring certification from laborers,
123 materialmen, and subcontractors, as defined in s. 713.01, before
124 ~~prior to~~ final payment to the contractor that such laborers,
125 materialmen, and subcontractors have no claims against the
126 contractor resulting from the completion of the work provided
127 for in the contract.

128

129 The state is ~~shall~~ not ~~be held~~ liable to any laborer,



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130 materialman, or subcontractor for any amounts greater than the
131 pro rata share as determined under this section.

132 (c)1. The amount of the bond shall equal the contract
133 price, except that for a contract in excess of \$250 million, if
134 the state, county, municipality, political subdivision, or other
135 public entity finds that a bond in the amount of the contract
136 price is not reasonably available, the public owner shall set
137 the amount of the bond at the largest amount reasonably
138 available, but not less than \$250 million.

139 2. For construction-management or design-build contracts,
140 if the public owner does not include in the bond amount the cost
141 of design or other nonconstruction services, the bond may not be
142 conditioned on performance of such services or payment to
143 persons furnishing such services. Notwithstanding paragraph (a),
144 such a bond may exclude persons furnishing such services from
145 the classes of persons protected by the bond.

146 (2) (a)1. If a claimant is no longer furnishing labor,
147 services, or materials on a project, a contractor or the
148 contractor's agent or attorney may elect to shorten the
149 ~~prescribed time in this paragraph~~ within which an action to
150 enforce any claim against a payment bond must ~~provided pursuant~~
151 ~~to this section may~~ be commenced by recording in the clerk's
152 office a notice in substantially the following form:

153
154 NOTICE OF CONTEST OF CLAIM
155 AGAINST PAYMENT BOND
156

157 To: ...(Name and address of claimant)...
158



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159 You are notified that the undersigned contests your notice
160 of nonpayment, dated,, and served on the
161 undersigned on,, and that the time within
162 which you may file suit to enforce your claim is limited to 60
163 days after the date of service of this notice.

164
165 DATED on,

166
167 Signed: ...(Contractor or Attorney)...

168
169 The claim of a ~~any~~ claimant upon whom such notice is served
170 and who fails to institute a suit to enforce his or her claim
171 against the payment bond within 60 days after service of such
172 notice shall be extinguished automatically. The contractor or
173 the contractor's attorney ~~clerk~~ shall mail a copy of the notice
174 of contest to the claimant at the address shown in the notice of
175 nonpayment or most recent amendment thereto and shall certify to
176 such service on the face of the ~~such~~ notice and record the
177 notice. ~~Service is complete upon mailing.~~

178 2. A claimant, except a laborer, who is not in privity with
179 the contractor shall, before commencing or not later than 45
180 days after commencing to furnish labor, services, or materials
181 for the prosecution of the work, furnish the contractor with a
182 written notice that he or she intends to look to the bond for
183 protection. A claimant who is not in privity with the contractor
184 and who has not received payment for his or her labor, services,
185 or materials shall deliver to the contractor and to the surety
186 written notice of the performance of the labor or delivery of
187 the materials or supplies and of the nonpayment. The notice of



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188 nonpayment shall ~~may~~ be served ~~at any time~~ during the progress
189 of the work or thereafter but may not be served earlier than
190 ~~before~~ 45 days after the first furnishing of labor, services, or
191 materials or, and not later than 90 days after the final
192 furnishing of the labor, services, or materials by the claimant
193 or, with respect to rental equipment, not later than 90 days
194 after the date that the rental equipment was last on the job
195 site available for use. Any notice of nonpayment served by a
196 claimant who is not in privity with the contractor which
197 includes sums for retainage must specify the portion of the
198 amount claimed for retainage. An ~~No~~ action for the labor,
199 materials, or supplies may not be instituted against the
200 contractor or the surety unless the notice to the contractor and
201 notice of nonpayment have been served, if required by this
202 section both notices have been given. If the payment bond is not
203 recorded before commencement of construction, the time period
204 for the claimant to serve the required notices may at the option
205 of the claimant be calculated from the dates specified in this
206 section or from the date the claimant is served a copy of the
207 bond. However, the limitation period for commencement of an
208 action on the bond as established in subsection (10) may not be
209 expanded. Notices required or permitted under this section shall
210 ~~may~~ be served in accordance with s. 713.18. A claimant may not
211 waive in advance his or her right to bring an action under the
212 bond against the surety. In any action brought to enforce a
213 claim against a payment bond under this section, the prevailing
214 party is entitled to recover a reasonable fee for the services
215 of his or her attorney for trial and appeal or for arbitration,
216 in an amount to be determined by the court, which fee must be



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217 taxed as part of the prevailing party's costs, as allowed in
218 equitable actions. The time periods for service of a notice of
219 nonpayment or for bringing an action against a contractor or a
220 surety shall be measured from the last day of furnishing labor,
221 services, or materials by the claimant and may ~~shall~~ not be
222 measured by other standards, such as the issuance of a
223 certificate of occupancy or the issuance of a certificate of
224 substantial completion.

225 (b) When a person is required to execute a waiver of his or
226 her right to make a claim against the payment bond in exchange
227 for, or to induce payment of, a progress payment, the waiver may
228 be in substantially the following form:

229
230 WAIVER OF RIGHT TO CLAIM
231 AGAINST THE PAYMENT BOND
232 (PROGRESS PAYMENT)
233

234 The undersigned, in consideration of the sum of \$....,
235 hereby waives its right to claim against the payment bond for
236 labor, services, or materials furnished through ...(insert
237 date)... to ...(insert the name of your customer)... on the job
238 of ...(insert the name of the owner)..., for improvements to the
239 following described project:

240
241 (description of project)
242

243 This waiver does not cover any retention or any labor, services,
244 or materials furnished after the date specified.
245



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246 DATED ON,

247 ... (Claimant)...

248 By:.....

249

250 (c) When a person is required to execute a waiver of his or

251 her right to make a claim against the payment bond, in exchange

252 for, or to induce payment of, the final payment, the waiver may

253 be in substantially the following form:

254

255 WAIVER OF RIGHT TO CLAIM

256 AGAINST THE PAYMENT BOND

257 (FINAL PAYMENT)

258

259 The undersigned, in consideration of the final payment in

260 the amount of \$...., hereby waives its right to claim against

261 the payment bond for labor, services, or materials furnished to

262 ... (insert the name of your customer)... on the job of

263 ... (insert the name of the owner)..., for improvements to the

264 following described project:

265

266 (description of project)

267

268 DATED ON,

269 ... (Claimant)...

270 By:.....

271

272 (d) A person may not require a claimant to furnish a waiver

273 that is different from the forms in paragraphs (b) and (c).

274

(e) A claimant who executes a waiver in exchange for a



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275 check may condition the waiver on payment of the check.

276 (f) A waiver that is not substantially similar to the forms
277 in this subsection is enforceable in accordance with its terms.

278 (3) The bond required in subsection (1) may be in
279 substantially the following form:

280

281 PUBLIC CONSTRUCTION BOND

282 Bond No....(enter bond number)...

283

284 BY THIS BOND, We, as Principal and, a
285 corporation, as Surety, are bound to, herein called Owner,
286 in the sum of \$....., for payment of which we bind ourselves, our
287 heirs, personal representatives, successors, and assigns,
288 jointly and severally.

289 THE CONDITION OF THIS BOND is that if Principal:

290 1. Performs the contract dated,, between
291 Principal and Owner for construction of, the contract being
292 made a part of this bond by reference, at the times and in the
293 manner prescribed in the contract; and

294 2. Promptly makes payments to all claimants, as defined in
295 Section 255.05(1), Florida Statutes, supplying Principal with
296 labor, materials, or supplies, used directly or indirectly by
297 Principal in the prosecution of the work provided for in the
298 contract; and

299 3. Pays Owner all losses, damages, expenses, costs, and
300 attorney's fees, including appellate proceedings, that Owner
301 sustains because of a default by Principal under the contract;
302 and

303 4. Performs the guarantee of all work and materials



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304 furnished under the contract for the time specified in the
305 contract, then this bond is void; otherwise it remains in full
306 force.

307
308 Any action instituted by a claimant under this bond for payment
309 must be in accordance with the notice and time limitation
310 provisions in Section 255.05(2), Florida Statutes.

311
312 Any changes in or under the contract documents and compliance or
313 noncompliance with any formalities connected with the contract
314 or the changes does not affect Surety's obligation under this
315 bond.

316
317 DATED ON,

318
319 ... (Name of Principal) ...
320 By ... (As Attorney in Fact) ...
321 ... (Name of Surety) ...

322
323 (4) The payment bond provisions of all bonds required by
324 subsection (1) shall be construed and deemed statutory payment
325 bonds furnished pursuant to this section and such bonds shall
326 not under any circumstances be converted into common law bonds.

327 (5) In addition to the provisions of chapter 47, any action
328 authorized under this section may be brought in the county in
329 which the public building or public work is being constructed or
330 repaired. This subsection shall not apply to an action
331 instituted prior to May 17, 1977.

332 (6) All payment bond forms used by a public owner and all



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333 payment bonds executed pursuant to this section by a surety
334 shall make reference to this section by number and shall contain
335 reference to the notice and time limitation provisions in
336 subsection (2).

337 (7) In lieu of the bond required by this section, a
338 contractor may file with the state, county, city, or other
339 political authority an alternative form of security in the form
340 of cash, a money order, a certified check, a cashier's check, an
341 irrevocable letter of credit, or a security of a type listed in
342 part II of chapter 625. Any such alternative form of security
343 shall be for the same purpose and be subject to the same
344 conditions as those applicable to the bond required by this
345 section. The determination of the value of an alternative form
346 of security shall be made by the appropriate state, county,
347 city, or other political subdivision.

348 (8) When a contractor has furnished a payment bond pursuant
349 to this section, he or she may, when the state, county,
350 municipality, political subdivision, or other public authority
351 makes any payment to the contractor or directly to a claimant,
352 serve a written demand on any claimant who is not in privity
353 with the contractor for a written statement under oath of his or
354 her account showing the nature of the labor or services
355 performed and to be performed, if any; the materials furnished;
356 the materials to be furnished, if known; the amount paid on
357 account to date; the amount due; and the amount to become due,
358 if known, as of the date of the statement by the claimant. Any
359 such demand to a claimant who is not in privity with the
360 contractor must be served on the claimant at the address and to
361 the attention of any person who is designated to receive the



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362 demand in the notice to contractor served by the claimant. The
363 failure or refusal to furnish the statement does not deprive the
364 claimant of his or her rights under the bond if the demand is
365 not served at the address of the claimant or directed to the
366 attention of the person designated to receive the demand in the
367 notice to contractor. The failure to furnish the statement
368 within 30 days after the demand, or the furnishing of a false or
369 fraudulent statement, deprives the claimant who fails to furnish
370 the statement, or who furnishes the false or fraudulent
371 statement, of his or her rights under the bond. If the
372 contractor serves more than one demand for statement of account
373 on a claimant and none of the information regarding the account
374 has changed since the claimant's last response to a demand, the
375 failure or refusal to furnish such statement does not deprive
376 the claimant of his or her rights under the bond. The negligent
377 inclusion or omission of any information deprives the claimant
378 of his or her rights under the bond to the extent that the
379 contractor can demonstrate prejudice from such act or omission
380 by the claimant. The failure to furnish a response to a demand
381 for statement of account does not affect the validity of any
382 claim on the bond being enforced in a lawsuit filed before the
383 date the demand for statement of account is received by the
384 claimant.

385 (9) On any public works project for which the public
386 authority requires a performance and payment bond, suits at law
387 and in equity may be brought and maintained by and against the
388 public authority on any contract claim arising from breach of an
389 express provision or an implied covenant of a written agreement
390 or a written directive issued by the public authority pursuant



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391 to the written agreement. In any such suit, the public authority
392 and the contractor shall have all of the same rights and
393 obligations as a private person under a like contract except
394 that no liability may be based on an oral modification of either
395 the written contract or written directive. Nothing herein shall
396 be construed to waive the sovereign immunity of the state and
397 its political subdivisions from equitable claims and equitable
398 remedies. The provisions of this subsection shall apply only to
399 contracts entered into on or after July 1, 1999.

400 (10) An action, except an action for recovery of retainage,
401 must be instituted against the contractor or the surety on the
402 payment bond or the payment provisions of a combined payment and
403 performance bond within 1 year after the performance of the
404 labor or completion of delivery of the materials or supplies. An
405 action for recovery of retainage must be instituted against the
406 contractor or the surety within 1 year after the performance of
407 the labor or completion of delivery of the materials or
408 supplies; however, such an action may not be instituted until
409 one of the following conditions is satisfied:

410 (a) The public entity has paid out the claimant's retainage
411 to the contractor, and the time provided under s. 218.735 or s.
412 255.073(3) for payment of that retainage to the claimant has
413 expired;

414 (b) The claimant has completed all work required under its
415 contract and 70 days have passed since the contractor sent its
416 final payment request to the public entity; or

417 (c) At least 160 days have passed since reaching
418 substantial completion of the construction services purchased,
419 as defined in the contract, or if not defined in the contract,



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420 since reaching beneficial occupancy or use of the project.

421 (d) The claimant has asked the contractor, in writing, for
422 any of the following information and the contractor has failed
423 to respond to the claimant's request, in writing, within 10 days
424 after receipt of the request:

425 1. Whether the project has reached substantial completion,
426 as that term is defined in the contract, or if not defined in
427 the contract, if beneficial occupancy or use of the project has
428 occurred.

429 2. Whether the contractor has received payment of the
430 claimant's retainage, and if so, the date the retainage was
431 received by the contractor.

432 3. Whether the contractor has sent its final payment
433 request to the public entity, and if so, the date on which the
434 final payment request was sent.

435
436 If none of the conditions described in paragraph (a), paragraph
437 (b), paragraph (c), or paragraph (d) is satisfied and an action
438 for recovery of retainage cannot be instituted within the 1-year
439 limitation period set forth in this subsection, this limitation
440 period shall be extended until 120 days after one of these
441 conditions is satisfied.

442 (11) When a contractor furnishes and records a payment and
443 performance bond for a public works project in accordance with
444 this section, the public authority may not condition its
445 payments to the contractor on the production of a release,
446 waiver, or like documentation from a claimant demonstrating that
447 the claimant does not have an outstanding claim against the
448 contractor, the surety, the payment bond, or the public



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449 authority for payments due on labor, services, or materials
450 furnished on the public works project.

451 Section 3. Paragraph (b) of subsection (2) of section
452 713.10, Florida Statutes, is amended to read:

453 713.10 Extent of liens.—

454 (2)

455 (b) The interest of the lessor ~~is shall~~ not ~~be~~ subject to
456 liens for improvements made by the lessee when:

457 1. The lease, or a short form or a memorandum of the lease
458 that contains the specific language in the lease prohibiting
459 such liability, is recorded in the official records of the
460 county where the premises are located before the recording of a
461 notice of commencement for improvements to the premises and the
462 terms of the lease expressly prohibit such liability; or

463 2. The terms of the lease expressly prohibit such
464 liability, and a notice advising that leases for the rental of
465 premises on a parcel of land prohibit such liability has been
466 recorded in the official records of the county in which the
467 parcel of land is located before the recording of a notice of
468 commencement for improvements to the premises, and the notice
469 includes the following:

470 a. The name of the lessor.

471 b. The legal description of the parcel of land to which the
472 notice applies.

473 c. The specific language contained in the various leases
474 prohibiting such liability.

475 d. A statement that all or a majority of the leases entered
476 into for premises on the parcel of land expressly prohibit such
477 liability.



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478 3. The lessee is a mobile home owner who is leasing a
479 mobile home lot in a mobile home park from the lessor.

480
481 A notice that is consistent with subparagraph 2. effectively
482 prohibits liens for improvements made by a lessee even if other
483 leases for premises on the parcel do not expressly prohibit
484 liens or if provisions of each lease restricting the application
485 of liens are not identical.

486 Section 4. Paragraph (e) of subsection (1) of section
487 713.13, Florida Statutes, is amended to read:

488 713.13 Notice of commencement.—

489 (1)

490 (e) A copy of any payment bond must be attached at the time
491 of recordation of the notice of commencement. The failure to
492 attach a copy of the bond to the notice of commencement when the
493 notice is recorded negates the exemption provided in s.
494 713.02(6). However, if a payment bond under s. 713.23 exists but
495 was not attached at the time of recordation of the notice of
496 commencement, the bond may be used to transfer any recorded lien
497 of a lienor except that of the contractor by the recordation and
498 service of a notice of bond pursuant to s. 713.23(2). The notice
499 requirements of s. 713.23 apply to any claim against the bond;
500 however, the time limits for serving any required notices shall,
501 at the option of the lienor, be calculated from the dates ~~begin~~
502 ~~running from the later of the time~~ specified in s. 713.23 or the
503 date the notice of bond is served on the lienor.

504 Section 5. Subsections (1) and (4) of section 713.132,
505 Florida Statutes, are amended to read:

506 713.132 Notice of termination.—



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507 (1) An owner may terminate the period of effectiveness of a
508 notice of commencement by executing, swearing to, and recording
509 a notice of termination that contains:

510 (a) The same information as the notice of commencement;

511 (b) The recording office document book and page reference
512 numbers and date of the notice of commencement;

513 (c) A statement of the date as of which the notice of
514 commencement is terminated, which date may not be earlier than
515 30 days after the notice of termination is recorded;

516 (d) A statement specifying that the notice applies to all
517 the real property subject to the notice of commencement or
518 specifying the portion of such real property to which it
519 applies;

520 (e) A statement that all lienors have been paid in full;
521 and

522 (f) A statement that the owner has, before recording the
523 notice of termination, served a copy of the notice of
524 termination on the contractor and on each lienor who has a
525 direct contract with the owner or who has served a notice to
526 owner given notice. The owner is not required to serve a copy of
527 the notice of termination on any lienor who has executed a
528 waiver and release of lien upon final payment in accordance with
529 s. 713.20.

530 (4) A notice of termination is effective to terminate the
531 notice of commencement at the later of 30 days after recording
532 of the notice of termination or the date stated in the notice of
533 termination as the date on which the notice of commencement is
534 terminated, if provided that the notice of termination has been
535 served pursuant to paragraph (1)(f) on the contractor and on



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536 each lienor who has a direct contract with the owner or who has
537 served a notice to owner ~~given notice.~~

538 Section 6. Section 713.16, Florida Statutes, is amended to
539 read:

540 713.16 Demand for copy of contract and statements of
541 account; form.—

542 (1) A copy of the contract of a lienor or owner and a
543 statement of the amount due or to become due if fixed or
544 ascertainable thereon must be furnished by any party thereto,
545 upon written demand of an owner or a lienor contracting with or
546 employed by the other party to such contract. If the owner or
547 lienor refuses or neglects to furnish such copy of the contract
548 or such statement, or willfully and falsely states the amount
549 due or to become due if fixed or ascertainable under such
550 contract, any person who suffers any detriment thereby has a
551 cause of action against the person refusing or neglecting to
552 furnish the same or willfully and falsely stating the amount due
553 or to become due for his or her damages sustained thereby. The
554 information contained in such copy or statement furnished
555 pursuant to such written demand is binding upon the owner or
556 lienor furnishing it unless actual notice of any modification is
557 given to the person demanding the copy or statement before such
558 person acts in good faith in reliance on it. The person
559 demanding such documents must pay for the reproduction thereof;
560 and, if such person fails or refuses to do so, he or she is
561 entitled only to inspect such documents at reasonable times and
562 places.

563 (2) The owner may serve in writing a demand of any lienor
564 for a written statement under oath of his or her account showing



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565 the nature of the labor or services performed and to be
566 performed, if any, the materials furnished, the materials to be
567 furnished, if known, the amount paid on account to date, the
568 amount due, and the amount to become due, if known, as of the
569 date of the statement by the lienor. Any such demand to a lienor
570 must be served on the lienor at the address and to the attention
571 of any person who is designated to receive the demand in the
572 notice to owner served by such lienor and must include a
573 description of the property and the names of the owner, the
574 contractor, and the lienor's customer, as set forth in the
575 lienor's notice to owner. The failure or refusal to furnish the
576 statement does not deprive the lienor of his or her lien if the
577 demand is not served at the address of the lienor or directed to
578 the attention of the person designated to receive the demand in
579 the notice to owner. The failure or refusal to furnish the
580 statement under oath within 30 days after the demand, or the
581 furnishing of a false or fraudulent statement, deprives the
582 person so failing or refusing to furnish such statement of his
583 or her lien. If the owner serves more than one demand for
584 statement of account on a lienor and none of the information
585 regarding the account has changed since the lienor's last
586 response to a demand, the failure or refusal to furnish such
587 statement does not deprive the lienor of his or her lien. The
588 negligent inclusion or omission of any information deprives the
589 person of his or her lien to the extent the owner can
590 demonstrate prejudice from such act or omission by the lienor.
591 The failure to furnish a response to a demand for statement of
592 account does not affect the validity of any claim of lien being
593 enforced through a foreclosure case filed before ~~prior to~~ the



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594 date the demand for statement is received by the lienor.

595 (3) A request for sworn statement of account must be in
596 substantially the following form:

597

598 REQUEST FOR SWORN STATEMENT OF ACCOUNT

599

600 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
601 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
602 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

603

604 To: ...(Lienor's name and address)...

605

606 The undersigned hereby demands a written statement under oath of
607 his or her account showing the nature of the labor or services
608 performed and to be performed, if any, the materials furnished,
609 the materials to be furnished, if known, the amount paid on
610 account to date, the amount due, and the amount to become due,
611 if known, as of the date of the statement for the improvement of
612 real property identified as ...(property description)....

613

614 ...(name of contractor)...

615

616 ...(name of the lienor's customer, as set forth in the
617 lienor's Notice to Owner, if such notice has been served)...

618

619

620 ...(signature and address of owner)...

621 ...(date of request for sworn statement of account)...

622



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(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by such lienor. The demand must include a description of the property and the names of the owner, the contractor, and the lienor's customer, as set forth in the lienor's notice to contractor. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or



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652 her rights under the bond. The negligent inclusion or omission
653 of any information deprives the person of his or her rights
654 under the bond to the extent the contractor can demonstrate
655 prejudice from such act or omission by the lienor. The failure
656 to furnish a response to a demand for statement of account does
657 not affect the validity of any claim on the bond being enforced
658 in a lawsuit filed prior to the date the demand for statement of
659 account is received by the lienor.

660 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
661 ~~recorded a claim of lien~~ may serve with the claim of lien or
662 thereafter a ~~make~~ written demand on the owner for a written
663 statement under oath showing:

664 1. The amount of the direct contract under which the lien
665 was recorded;

666 2. The dates and amounts paid or to be paid by or on behalf
667 of the owner for all improvements described in the direct
668 contract;

669 3. The reasonable estimated costs of completing the direct
670 contract under which the lien was claimed pursuant to the scope
671 of the direct contract; and

672 4. If known, the actual cost of completion.

673 (b) Any owner who does not provide the statement within 30
674 days after demand, or who provides a false or fraudulent
675 statement, is not a prevailing party for purposes of an award of
676 attorney ~~attorney's~~ fees under s. 713.29. The written demand
677 must include the following warning in conspicuous type in
678 substantially the following form:

679
680 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN



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681 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN
682 THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO
683 ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS
684 STATEMENT.

685 (6) Any written demand served on the owner must include a
686 description of the property and the names of the contractor and
687 the lienor's customer, as set forth in the lienor's notice to
688 owner.

689 (7)~~(6)~~ For purposes of this section, the term "information"
690 means the nature and quantity of the labor, services, and
691 materials furnished or to be furnished by a lienor and the
692 amount paid, the amount due, and the amount to become due on the
693 lienor's account.

694 Section 7. Section 713.18, Florida Statutes, is amended to
695 read:

696 713.18 Manner of serving notices and other instruments.—

697 (1) Service of notices, claims of lien, affidavits,
698 assignments, and other instruments permitted or required under
699 this part, or copies thereof when so permitted or required,
700 unless otherwise specifically provided in this part, must be
701 made by one of the following methods:

702 (a) By actual delivery to the person to be served; if a
703 partnership, to one of the partners; if a corporation, to an
704 officer, director, managing agent, or business agent; or, if a
705 limited liability company, to a member or manager.

706 (b) By common carrier delivery service or ~~sending the same~~
707 by registered, Global Express Guaranteed, or certified mail,
708 with postage or shipping paid by the sender and prepaid, ~~or by~~
709 ~~overnight or second-day delivery~~ with evidence of delivery,



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710 which may be in an electronic format.

711 ~~(c) If the method specified in paragraph (a) or paragraph~~
712 ~~(b) cannot be accomplished,~~ By posting on the site of the
713 improvement if service as provided by paragraph (a) or paragraph
714 (b) cannot be accomplished premises.

715 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
716 to owner ~~or,~~ a notice to contractor under s. 713.23, s. 337.18,
717 ~~or a preliminary notice under s. 255.05 is mailed by registered~~
718 ~~or certified mail with postage prepaid to the person to be~~
719 ~~served at any of the addresses set forth in subsection (3)~~
720 ~~within 40 days after the date the lienor first furnishes labor,~~
721 ~~services, or materials, service of that notice is effective as~~
722 of the date of mailing if:

723 (a) The notice is mailed by registered, Global Express
724 Guaranteed, or certified mail, with postage prepaid, to the
725 person to be served at any of the addresses set forth in
726 subsection (3);

727 (b) The notice is mailed within 40 days after the date the
728 lienor first furnishes labor, services, or materials; and

729 (c)1. The person who served the notice maintains a
730 registered or certified mail log that shows the registered or
731 certified mail number issued by the United States Postal
732 Service, the name and address of the person served, and the date
733 stamp of the United States Postal Service confirming the date of
734 mailing; or ~~if~~

735 2. The person who served the notice maintains electronic
736 tracking records generated by ~~through use of~~ the United States
737 ~~Postal Service Confirm service or a similar service~~ containing
738 the postal tracking number, the name and address of the person



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739 served, and verification of the date of receipt by the United
740 States Postal Service.

741 (3) (a) Service of ~~If~~ an instrument ~~served~~ pursuant to this
742 section is effective on the date of mailing the instrument if
743 it:

744 1. Is sent to the last address shown in the notice of
745 commencement or any amendment thereto or, in the absence of a
746 notice of commencement, to the last address shown in the
747 building permit application, or to the last known address of the
748 person to be served; ~~and, is not received, but~~

749 2. Is returned as being "refused," "moved, not
750 forwardable," or "unclaimed," or is otherwise not delivered or
751 deliverable through no fault of the person serving the item,
752 ~~then service is effective on the date the instrument was sent.~~

753 (b) If the address shown in the notice of commencement or
754 any amendment to the notice of commencement, or, in the absence
755 of a notice of commencement, in the building permit application,
756 is incomplete for purposes of mailing or delivery, the person
757 serving the item may complete the address and properly format it
758 according to United States Postal Service addressing standards
759 using information obtained from the property appraiser or
760 another public record without affecting the validity of service
761 under this section.

762 (4) A notice served by a lienor on one owner or one partner
763 of a partnership owning the real property ~~If the real property~~
764 ~~is owned by more than one person or a partnership, a lienor may~~
765 ~~serve any notices or other papers under this part on any one of~~
766 ~~such owners or partners, and such notice is deemed notice to all~~
767 owners and partners.



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768 Section 8. Section 713.22, Florida Statutes, is amended to
769 read:

770 713.22 Duration of lien.—

771 (1) A ~~No~~ lien provided by this part does not ~~shall~~ continue
772 for a longer period than 1 year after the claim of lien has been
773 recorded or 1 year after the recording of an amended claim of
774 lien that shows a later date of final furnishing of labor,
775 services, or materials, unless within that time an action to
776 enforce the lien is commenced in a court of competent
777 jurisdiction. A lien that has been continued beyond the 1-year
778 period ~~The continuation of the lien effected~~ by the commencement
779 of an ~~the~~ action is ~~shall~~ not enforceable ~~be good~~ against
780 creditors or subsequent purchasers for a valuable consideration
781 and without notice, unless a notice of lis pendens is recorded.

782 (2) An owner or the owner's ~~agent or~~ attorney may elect to
783 shorten the time prescribed in subsection (1) within which to
784 commence an action to enforce any claim of lien or claim against
785 a bond or other security under s. 713.23 or s. 713.24 by
786 recording in the clerk's office a notice in substantially the
787 following form:

788
789 NOTICE OF CONTEST OF LIEN

790 To: ...(Name and address of lienor)...

791 You are notified that the undersigned contests the claim of lien
792 filed by you on, ...(year)..., and recorded in Book
793, Page, of the public records of County, Florida,
794 and that the time within which you may file suit to enforce your
795 lien is limited to 60 days from the date of service of this
796 notice. This day of, ...(year)....



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Signed: ... (Owner or Attorney) ...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the such notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 9. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. If a notice of commencement with the attached bond is not recorded before commencement of construction, ~~or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond,~~ the lienor not in privity with the contractor may, in the alternative, elect to serve the notice to the contractor up to shall have 45 days after from the date the lienor is served with



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826 ~~a copy notified of the existence of the bond within which to~~
827 ~~serve the notice.~~ A notice to owner pursuant to s. 713.06 which
828 has been timely served on the contractor satisfies the
829 requirements of this paragraph. In no event, however, shall the
830 limitation period for commencement of an action on the payment
831 bond as established in paragraph (e) be expanded. The notice may
832 be in substantially the following form and may be combined with
833 a notice to owner given under s. 713.06 and, if so, may be
834 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR:

835
836
837 NOTICE TO CONTRACTOR

838
839 To ... (name and address of contractor) ...

840
841 The undersigned hereby informs you that he or she has furnished
842 or is furnishing services or materials as follows:

843
844 ...(general description of services or materials)... for the
845 improvement of the real property identified as ...(property
846 description)... under an order given by ...(lienor's
847 customer)....

848
849 This notice is to inform you that the undersigned intends to
850 look to the contractor's bond to secure payment for the
851 furnishing of materials or services for the improvement of the
852 real property.

853
854 ...(name of lienor)...



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855 ...(signature of lienor or lienor's representative)...

856 ...(date)...

857 ...(lienor's address)...

858

859 ~~The undersigned notifies you that he or she has furnished or is~~
860 ~~furnishing ...(services or materials)... for the improvement of~~
861 ~~the real property identified as ...(property description)...~~
862 ~~owned by ...(owner's name and address)... under an order given~~
863 ~~by and that the undersigned will look to the contractor's~~
864 ~~bond for protection on the work.~~

865

866 ~~...(Lienor's signature and address)...~~

867

868 (d) In addition, a lienor is required, as a condition
869 precedent to recovery under the bond, to serve a written notice
870 of nonpayment to the contractor and the surety not later than 90
871 days after the final furnishing of labor, services, or materials
872 by the lienor. A written notice satisfies this condition
873 precedent with respect to the payment described in the notice of
874 nonpayment, including unpaid finance charges due under the
875 lienor's contract, and with respect to any other payments which
876 become due to the lienor after the date of the notice of
877 nonpayment. The time period for serving a written notice of
878 nonpayment shall be measured from the last day of furnishing
879 labor, services, or materials by the lienor and shall not be
880 measured by other standards, such as the issuance of a
881 certificate of occupancy or the issuance of a certificate of
882 substantial completion. The failure of a lienor to receive
883 retainage sums not in excess of 10 percent of the value of



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884 labor, services, or materials furnished by the lienor is not
885 considered a nonpayment requiring the service of the notice
886 provided under this paragraph. If the payment bond is not
887 recorded before commencement of construction, the time period
888 for the lienor to serve a notice of nonpayment may at the option
889 of the lienor be calculated from the date specified in this
890 section or the date the lienor is served a copy of the bond.
891 However, the limitation period for commencement of an action on
892 the payment bond as established in paragraph (e) may not be
893 expanded. The notice under this paragraph may be in
894 substantially the following form:

895
896 NOTICE OF NONPAYMENT

897
898 To ...(name of contractor and address)...

899
900 ...(name of surety and address)...

901
902 The undersigned notifies you that he or she has furnished
903 ...(describe labor, services, or materials)... for the
904 improvement of the real property identified as ...(property
905 description).... The amount now due and unpaid is \$.....

906
907 ...(signature and address of lienor)...

908
909 (e) An ~~No~~ action for the labor or materials or supplies may
910 not be instituted or prosecuted against the contractor or surety
911 unless both notices have been given, if required by this
912 section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted



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913 against the contractor or against the surety on the bond under
914 this section after 1 year from the performance of the labor or
915 completion of delivery of the materials and supplies. The time
916 period for bringing an action against the contractor or surety
917 on the bond shall be measured from the last day of furnishing
918 labor, services, or materials by the lienor. The time period ~~and~~
919 may shall not be measured by other standards, such as the
920 issuance of a certificate of occupancy or the issuance of a
921 certificate of substantial completion. A contractor or the
922 contractor's ~~agent or~~ attorney may elect to shorten the
923 ~~prescribed~~ time within which an action to enforce any claim
924 against a payment bond provided under this section or s. 713.245
925 must may be commenced at any time after a notice of nonpayment,
926 if required, has been served for the claim by recording in the
927 clerk's office a notice in substantially the following form:
928

929 NOTICE OF CONTEST OF CLAIM
930 AGAINST PAYMENT BOND

931
932 To: ...(Name and address of lienor)...

933 You are notified that the undersigned contests your notice
934 of nonpayment, dated,, and served on the undersigned
935 on,, and that the time within which you may file suit
936 to enforce your claim is limited to 60 days from the date of
937 service of this notice.

938
939 DATED on,

940
941 Signed: ...(Contractor or Attorney)...



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942
943 The claim of any lienor upon whom the notice is served and who
944 fails to institute a suit to enforce his or her claim against
945 the payment bond within 60 days after service of the notice
946 shall be extinguished automatically. The contractor or the
947 contractor's attorney ~~clerk~~ shall serve mail a copy of the
948 notice of contest to the lienor at the address shown in the
949 notice of nonpayment or most recent amendment thereto and shall
950 certify to such service on the face of the notice and record the
951 notice. ~~Service is complete upon mailing.~~

952 (f) A Any lienor has a direct right of action on the bond
953 against the surety. Any provision in a payment bond which
954 further restricts ~~A bond must not contain any provisions~~
955 ~~restricting~~ the classes of persons who are protected by the
956 payment bond, which restricts ~~thereby or~~ the venue of any
957 proceeding relating to such payment bond, which limits or
958 expands the effective duration of the payment bond, or which
959 adds conditions precedent to the enforcement of a claim against
960 a payment bond beyond those provided in this part is
961 unenforceable. The surety is not entitled to the defense of pro
962 tanto discharge as against any lienor because of changes or
963 modifications in the contract to which the surety is not a
964 party; but the liability of the surety may not be increased
965 beyond the penal sum of the bond. A lienor may not waive in
966 advance his or her right to bring an action under the bond
967 against the surety.

968 (2) The bond shall secure every lien under the direct
969 contract accruing subsequent to its execution and delivery,
970 except that of the contractor. Every claim of lien, except that



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971 of the contractor, filed subsequent to execution and delivery of
972 the bond shall be transferred to it with the same effect as
973 liens transferred under s. 713.24. Record notice of the transfer
974 shall be effected by the contractor, or any person having an
975 interest in the property against which the claim of lien has
976 been asserted, by recording in the clerk's office a notice, with
977 the bond attached, in substantially the following form:

978
979 NOTICE OF BOND

980
981 To ... (Name and Address of Lienor) ...

982
983 You are notified that the claim of lien filed by you on,
984, and recorded in Official Records Book at page of
985 the public records of County, Florida, is secured by a
986 bond, a copy being attached.

987
988 Signed: ... (Name of person recording notice) ...

989
990 The notice shall be verified. The person recording the notice of
991 bond clerk shall serve mail a copy of the notice with a copy of
992 the bond to the lienor at the address shown in the claim of
993 lien, or the most recent amendment to it; shall certify to the
994 service on the face of the notice; and shall record the notice.
995 ~~The clerk shall receive the same fee as prescribed in s.~~
996 ~~713.24(1) for certifying to a transfer of lien.~~

997 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds
998 under this section except when those provisions conflict with
999 this section.



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1000 Section 10. This act shall take effect October 1, 2012.

1001

1002 ===== T I T L E A M E N D M E N T =====

1003 And the title is amended as follows:

1004 Delete everything before the enacting clause
1005 and insert:

1006 A bill to be entitled
1007 An act relating to construction liens and bonds;
1008 amending s. 95.11, F.S.; adding a cross-reference;
1009 deleting a provision for the limitation of actions
1010 against a bond; amending s. 255.05, F.S.; requiring
1011 that the bond number be stated on the first page of
1012 the bond; providing that a provision in a payment bond
1013 furnished for a public works contract that limits or
1014 expands the effective duration of the bond or adds
1015 conditions precedent is unenforceable; requiring a
1016 contractor, or the contractor's attorney, to serve
1017 rather than mail a notice of contest of claim against
1018 the payment bond; providing additional time for
1019 service when the bond is not recorded; specifying the
1020 duration of the bond; providing that payment to a
1021 contractor who has furnished a payment bond on a
1022 public works project may not be conditioned upon
1023 production of certain documents; providing
1024 prerequisites for commencement of an action against a
1025 payment bond; amending s. 713.10, F.S.; providing that
1026 a specified notice concerning a lessor's liability for
1027 liens for improvements made by the lessee prohibits
1028 liens even if other leases do not expressly prohibit



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1029 liens or if certain other provisions are not
1030 identical; amending s. 713.13, F.S.; providing
1031 additional time for service when a notice of
1032 commencement is not recorded with a copy of the bond
1033 attached; amending s. 713.132, F.S.; requiring notice
1034 of termination to be served on lienors in privity with
1035 the owner; amending s. 713.16, F.S.; revising
1036 requirements for demands for a copy of a construction
1037 contract and a statement of account; authorizing a
1038 lienor to make certain written demands to an owner for
1039 certain written statements; providing requirements for
1040 such written demands; amending s. 713.18, F.S.;
1041 providing additional methods by which certain items
1042 may be served; revising provisions relating to when
1043 service of specified items is effective; specifying
1044 requirements for certain written instruments under
1045 certain circumstances; amending s. 713.22, F.S.;
1046 requiring that the clerk serve rather than mail a
1047 notice of contest of lien; amending s. 713.23, F.S.;
1048 revising the contents of a notice to contractor;
1049 requiring that a contractor serve rather than mail a
1050 notice of contest of claim against the payment bond
1051 and a notice of bond; clarifying the attachment of the
1052 bond to the notice; providing that a provision in a
1053 payment bond that limits or expands the effective
1054 duration of the bond or adds conditions precedent is
1055 unenforceable; clarifying applicability of certain
1056 provisions; providing an effective date.



214198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) and (5) of section 95.11,
Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real
property.—Actions other than for recovery of real property shall
be commenced as follows:

(2) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of
record, of this state or any court of the United States, any
other state or territory in the United States, or a foreign



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14 country.

15 (b) A legal or equitable action on a contract, obligation,
16 or liability founded on a written instrument, except for an
17 action to enforce a claim against a payment bond, ~~which shall be~~
18 governed by the applicable provisions of s. ss. 255.05(10), s.
19 337.18(1), or s. and 713.23(1)(e).

20 (c) An action to foreclose a mortgage.

21 (d) An action alleging a willful violation of s. 448.110.

22 (e) Notwithstanding paragraph (b), an action for breach of
23 a property insurance contract, with the period running from the
24 date of loss.

25 (5) WITHIN ONE YEAR.—

26 (a) An action for specific performance of a contract.

27 (b) An action to enforce an equitable lien arising from the
28 furnishing of labor, services, or material for the improvement
29 of real property.

30 (c) An action to enforce rights under the Uniform
31 Commercial Code—Letters of Credit, chapter 675.

32 (d) An action against any guaranty association and its
33 insured, with the period running from the date of the deadline
34 for filing claims in the order of liquidation.

35 ~~(e) An action to enforce any claim against a payment bond~~
36 ~~on which the principal is a contractor, subcontractor, or sub-~~
37 ~~subcontractor as defined in s. 713.01, for private work as well~~
38 ~~as public work, from the last furnishing of labor, services, or~~
39 ~~materials or from the last furnishing of labor, services, or~~
40 ~~materials by the contractor if the contractor is the principal~~
41 ~~on a bond on the same construction project, whichever is later.~~

42 (e)-(f) Except for actions described in subsection (8), a



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43 petition for extraordinary writ, other than a petition
44 challenging a criminal conviction, filed by or on behalf of a
45 prisoner as defined in s. 57.085.

46 (f)~~(g)~~ Except for actions described in subsection (8), an
47 action brought by or on behalf of a prisoner, as defined in s.
48 57.085, relating to the conditions of the prisoner's
49 confinement.

50 Section 2. Section 255.05, Florida Statutes, is amended to
51 read:

52 255.05 Bond of contractor constructing public buildings;
53 form; action by claimants ~~materialmen~~.

54 (1) (a) A ~~Any~~ person entering into a formal contract with
55 the state or any county, city, or political subdivision thereof,
56 or other public authority or private entity, for the
57 construction of a public building, for the prosecution and
58 completion of a public work, or for repairs upon a public
59 building or public work shall be required, before commencing the
60 work or before recommencing the work after a default or
61 abandonment, to execute, deliver to the public owner, and record
62 in the public records of the county where the improvement is
63 located, a payment and performance bond with a surety insurer
64 authorized to do business in this state as surety. A public
65 entity may not require a contractor to secure a surety bond
66 under this section from a specific agent or bonding company. The
67 bond must state on its front page: the name, principal business
68 address, and phone number of the contractor, the surety, the
69 owner of the property being improved, and, if different from the
70 owner, the contracting public entity; the contract number
71 assigned by the contracting public entity; the bond number



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72 assigned by the surety; and a description of the project
73 sufficient to identify it, such as a legal description or the
74 street address of the property being improved, and a general
75 description of the improvement. The ~~Such~~ bond shall be
76 conditioned upon the contractor's performance of the
77 construction work in the time and manner prescribed in the
78 contract and promptly making payments to all persons defined in
79 s. 713.01 who furnish labor, services, or materials for the
80 prosecution of the work provided for in the contract. A ~~Any~~
81 claimant may apply to the governmental entity having charge of
82 the work for copies of the contract and bond and shall thereupon
83 be furnished with a certified copy of the contract and bond. The
84 claimant has ~~shall have~~ a right of action against the contractor
85 and surety for the amount due him or her, including unpaid
86 finance charges due under the claimant's contract. Such action
87 may ~~shall~~ not involve the public authority in any expense. When
88 the ~~such~~ work is done for the state and the contract is for
89 \$100,000 or less, no payment and performance bond shall be
90 required. At the discretion of the official or board awarding
91 such contract when such work is done for any county, city,
92 political subdivision, or public authority, a ~~any~~ person
93 entering into such a contract that ~~which~~ is for \$200,000 or less
94 may be exempted from executing the payment and performance bond.
95 When such work is done for the state, the Secretary of
96 Management Services may delegate to state agencies the authority
97 to exempt any person entering into such a contract amounting to
98 more than \$100,000 but less than \$200,000 from executing the
99 payment and performance bond. If an ~~In the event such~~ exemption
100 is granted, the officer or officials is ~~shall~~ not be personally



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101 liable to persons suffering loss because of granting such
102 exemption. The Department of Management Services shall maintain
103 information on the number of requests by state agencies for
104 delegation of authority to waive the bond requirements by agency
105 and project number and whether any request for delegation was
106 denied and the justification for the denial. Any provision in a
107 payment bond furnished for public work contracts as provided by
108 this subsection which further restricts the classes of persons
109 ~~as defined in s. 713.01~~ protected by the bond, which restricts
110 ~~or~~ the venue of any proceeding relating to such bond, which
111 limits or expands the effective duration of the bond, or which
112 adds conditions precedent to the enforcement of a claim against
113 the bond beyond those provided in this section is unenforceable.

114 (b) The Department of Management Services shall adopt rules
115 with respect to all contracts for \$200,000 or less, to provide:

116 1. Procedures for retaining up to 10 percent of each
117 request for payment submitted by a contractor and procedures for
118 determining disbursements from the amount retained on a pro rata
119 basis to laborers, materialmen, and subcontractors, as defined
120 in s. 713.01.

121 2. Procedures for requiring certification from laborers,
122 materialmen, and subcontractors, as defined in s. 713.01, before
123 ~~prior to~~ final payment to the contractor that such laborers,
124 materialmen, and subcontractors have no claims against the
125 contractor resulting from the completion of the work provided
126 for in the contract.

127
128 The state is ~~shall~~ not ~~be held~~ liable to any laborer,
129 materialman, or subcontractor for any amounts greater than the



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130 pro rata share as determined under this section.

131 (c)1. The amount of the bond shall equal the contract
132 price, except that for a contract in excess of \$250 million, if
133 the state, county, municipality, political subdivision, or other
134 public entity finds that a bond in the amount of the contract
135 price is not reasonably available, the public owner shall set
136 the amount of the bond at the largest amount reasonably
137 available, but not less than \$250 million.

138 2. For construction-management or design-build contracts,
139 if the public owner does not include in the bond amount the cost
140 of design or other nonconstruction services, the bond may not be
141 conditioned on performance of such services or payment to
142 persons furnishing such services. Notwithstanding paragraph (a),
143 such a bond may exclude persons furnishing such services from
144 the classes of persons protected by the bond.

145 (2) (a)1. If a claimant is no longer furnishing labor,
146 services, or materials on a project, a contractor or the
147 contractor's agent or attorney may elect to shorten the
148 ~~prescribed time in this paragraph~~ within which an action to
149 enforce any claim against a payment bond must ~~provided pursuant~~
150 ~~to this section may~~ be commenced by recording in the clerk's
151 office a notice in substantially the following form:

152
153 NOTICE OF CONTEST OF CLAIM
154 AGAINST PAYMENT BOND
155

156 To: ...(Name and address of claimant)...

157
158 You are notified that the undersigned contests your notice



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159 of nonpayment, dated,, and served on the
160 undersigned on,, and that the time within
161 which you may file suit to enforce your claim is limited to 60
162 days after the date of service of this notice.

163

164 DATED on,

165

166 Signed: ...(Contractor or Attorney)...

167

168 The claim of a ~~any~~ claimant upon whom such notice is served and
169 who fails to institute a suit to enforce his or her claim
170 against the payment bond within 60 days after service of such
171 notice shall be extinguished automatically. The contractor or
172 the contractor's attorney ~~clerk~~ shall mail a copy of the notice
173 of contest to the claimant at the address shown in the notice of
174 nonpayment or most recent amendment thereto and shall certify to
175 such service on the face of the ~~such~~ notice and record the
176 notice. ~~Service is complete upon mailing.~~

177

178 2. A claimant, except a laborer, who is not in privity with
179 the contractor shall, before commencing or not later than 45
180 days after commencing to furnish labor, services, or materials
181 for the prosecution of the work, furnish the contractor with a
182 written notice that he or she intends to look to the bond for
183 protection. A claimant who is not in privity with the contractor
184 and who has not received payment for his or her labor, services,
185 or materials shall deliver to the contractor and to the surety
186 written notice of the performance of the labor or delivery of
187 the materials or supplies and of the nonpayment. The notice of
nonpayment shall ~~may~~ be served ~~at any time~~ during the progress



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188 of the work or thereafter but may not be served earlier than
189 ~~before~~ 45 days after the first furnishing of labor, services, or
190 materials or, and not later than 90 days after the final
191 furnishing of the labor, services, or materials by the claimant
192 or, with respect to rental equipment, not later than 90 days
193 after the date that the rental equipment was last on the job
194 site available for use. Any notice of nonpayment served by a
195 claimant who is not in privity with the contractor which
196 includes sums for retainage must specify the portion of the
197 amount claimed for retainage. An ~~Ne~~ action for the labor,
198 materials, or supplies may not be instituted against the
199 contractor or the surety unless the notice to the contractor and
200 notice of nonpayment have been served, if required by this
201 section both notices have been given. If the payment bond is not
202 recorded before commencement of construction, the time period
203 for the claimant to serve the required notices may at the option
204 of the claimant be calculated from the dates specified in this
205 section or from the date the claimant is served a copy of the
206 bond. However, the limitation period for commencement of an
207 action on the bond as established in subsection (10) may not be
208 expanded. Notices required or permitted under this section shall
209 ~~may~~ be served in accordance with s. 713.18. A claimant may not
210 waive in advance his or her right to bring an action under the
211 bond against the surety. In any action brought to enforce a
212 claim against a payment bond under this section, the prevailing
213 party is entitled to recover a reasonable fee for the services
214 of his or her attorney for trial and appeal or for arbitration,
215 in an amount to be determined by the court, which fee must be
216 taxed as part of the prevailing party's costs, as allowed in



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217 equitable actions. The time periods for service of a notice of
218 nonpayment or for bringing an action against a contractor or a
219 surety shall be measured from the last day of furnishing labor,
220 services, or materials by the claimant and may ~~shall~~ not be
221 measured by other standards, such as the issuance of a
222 certificate of occupancy or the issuance of a certificate of
223 substantial completion.

224 (b) When a person is required to execute a waiver of his or
225 her right to make a claim against the payment bond in exchange
226 for, or to induce payment of, a progress payment, the waiver may
227 be in substantially the following form:

228
229 WAIVER OF RIGHT TO CLAIM
230 AGAINST THE PAYMENT BOND
231 (PROGRESS PAYMENT)
232

233 The undersigned, in consideration of the sum of \$....,
234 hereby waives its right to claim against the payment bond for
235 labor, services, or materials furnished through ...(insert
236 date)... to ...(insert the name of your customer)... on the job
237 of ...(insert the name of the owner)..., for improvements to the
238 following described project:

239
240 (description of project)
241

242 This waiver does not cover any retention or any labor, services,
243 or materials furnished after the date specified.
244

245 DATED ON,



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246 ... (Claimant) ...

247 By:

248

249 (c) When a person is required to execute a waiver of his or
250 her right to make a claim against the payment bond, in exchange
251 for, or to induce payment of, the final payment, the waiver may
252 be in substantially the following form:

253

254 WAIVER OF RIGHT TO CLAIM

255 AGAINST THE PAYMENT BOND

256 (FINAL PAYMENT)

257

258 The undersigned, in consideration of the final payment in
259 the amount of \$...., hereby waives its right to claim against
260 the payment bond for labor, services, or materials furnished to
261 ...(insert the name of your customer)... on the job of
262 ...(insert the name of the owner)..., for improvements to the
263 following described project:

264

265 (description of project)

266

267 DATED ON,

268 ... (Claimant) ...

269 By:

270

271 (d) A person may not require a claimant to furnish a waiver
272 that is different from the forms in paragraphs (b) and (c).

273 (e) A claimant who executes a waiver in exchange for a
274 check may condition the waiver on payment of the check.



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275 (f) A waiver that is not substantially similar to the forms
276 in this subsection is enforceable in accordance with its terms.

277 (3) The bond required in subsection (1) may be in
278 substantially the following form:

279
280 PUBLIC CONSTRUCTION BOND
281 Bond No....(enter bond number)...

282
283 BY THIS BOND, We, as Principal and, a
284 corporation, as Surety, are bound to, herein called Owner,
285 in the sum of \$....., for payment of which we bind ourselves, our
286 heirs, personal representatives, successors, and assigns,
287 jointly and severally.

288 THE CONDITION OF THIS BOND is that if Principal:

289 1. Performs the contract dated,, between
290 Principal and Owner for construction of, the contract being
291 made a part of this bond by reference, at the times and in the
292 manner prescribed in the contract; and

293 2. Promptly makes payments to all claimants, as defined in
294 Section 255.05(1), Florida Statutes, supplying Principal with
295 labor, materials, or supplies, used directly or indirectly by
296 Principal in the prosecution of the work provided for in the
297 contract; and

298 3. Pays Owner all losses, damages, expenses, costs, and
299 attorney's fees, including appellate proceedings, that Owner
300 sustains because of a default by Principal under the contract;
301 and

302 4. Performs the guarantee of all work and materials
303 furnished under the contract for the time specified in the



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304 contract, then this bond is void; otherwise it remains in full
305 force.

306
307 Any action instituted by a claimant under this bond for payment
308 must be in accordance with the notice and time limitation
309 provisions in Section 255.05(2), Florida Statutes.

310
311 Any changes in or under the contract documents and compliance or
312 noncompliance with any formalities connected with the contract
313 or the changes does not affect Surety's obligation under this
314 bond.

315
316 DATED ON,

317
318 ... (Name of Principal) ...
319 By ... (As Attorney in Fact) ...
320 ... (Name of Surety) ...

321
322 (4) The payment bond provisions of all bonds required by
323 subsection (1) shall be construed and deemed statutory payment
324 bonds furnished pursuant to this section and such bonds shall
325 not under any circumstances be converted into common law bonds.

326 (5) In addition to the provisions of chapter 47, any action
327 authorized under this section may be brought in the county in
328 which the public building or public work is being constructed or
329 repaired. This subsection shall not apply to an action
330 instituted prior to May 17, 1977.

331 (6) All payment bond forms used by a public owner and all
332 payment bonds executed pursuant to this section by a surety



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333 shall make reference to this section by number and shall contain
334 reference to the notice and time limitation provisions in
335 subsection (2).

336 (7) In lieu of the bond required by this section, a
337 contractor may file with the state, county, city, or other
338 political authority an alternative form of security in the form
339 of cash, a money order, a certified check, a cashier's check, an
340 irrevocable letter of credit, or a security of a type listed in
341 part II of chapter 625. Any such alternative form of security
342 shall be for the same purpose and be subject to the same
343 conditions as those applicable to the bond required by this
344 section. The determination of the value of an alternative form
345 of security shall be made by the appropriate state, county,
346 city, or other political subdivision.

347 (8) When a contractor has furnished a payment bond pursuant
348 to this section, he or she may, when the state, county,
349 municipality, political subdivision, or other public authority
350 makes any payment to the contractor or directly to a claimant,
351 serve a written demand on any claimant who is not in privity
352 with the contractor for a written statement under oath of his or
353 her account showing the nature of the labor or services
354 performed and to be performed, if any; the materials furnished;
355 the materials to be furnished, if known; the amount paid on
356 account to date; the amount due; and the amount to become due,
357 if known, as of the date of the statement by the claimant. Any
358 such demand to a claimant who is not in privity with the
359 contractor must be served on the claimant at the address and to
360 the attention of any person who is designated to receive the
361 demand in the notice to contractor served by the claimant. The



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362 failure or refusal to furnish the statement does not deprive the
363 claimant of his or her rights under the bond if the demand is
364 not served at the address of the claimant or directed to the
365 attention of the person designated to receive the demand in the
366 notice to contractor. The failure to furnish the statement
367 within 30 days after the demand, or the furnishing of a false or
368 fraudulent statement, deprives the claimant who fails to furnish
369 the statement, or who furnishes the false or fraudulent
370 statement, of his or her rights under the bond. If the
371 contractor serves more than one demand for statement of account
372 on a claimant and none of the information regarding the account
373 has changed since the claimant's last response to a demand, the
374 failure or refusal to furnish such statement does not deprive
375 the claimant of his or her rights under the bond. The negligent
376 inclusion or omission of any information deprives the claimant
377 of his or her rights under the bond to the extent that the
378 contractor can demonstrate prejudice from such act or omission
379 by the claimant. The failure to furnish a response to a demand
380 for statement of account does not affect the validity of any
381 claim on the bond being enforced in a lawsuit filed before the
382 date the demand for statement of account is received by the
383 claimant.

384 (9) On any public works project for which the public
385 authority requires a performance and payment bond, suits at law
386 and in equity may be brought and maintained by and against the
387 public authority on any contract claim arising from breach of an
388 express provision or an implied covenant of a written agreement
389 or a written directive issued by the public authority pursuant
390 to the written agreement. In any such suit, the public authority



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391 and the contractor shall have all of the same rights and
392 obligations as a private person under a like contract except
393 that no liability may be based on an oral modification of either
394 the written contract or written directive. Nothing herein shall
395 be construed to waive the sovereign immunity of the state and
396 its political subdivisions from equitable claims and equitable
397 remedies. The provisions of this subsection shall apply only to
398 contracts entered into on or after July 1, 1999.

399 (10) An action, except an action for recovery of retainage,
400 must be instituted against the contractor or the surety on the
401 payment bond or the payment provisions of a combined payment and
402 performance bond within 1 year after the performance of the
403 labor or completion of delivery of the materials or supplies. An
404 action for recovery of retainage must be instituted against the
405 contractor or the surety within 1 year after the performance of
406 the labor or completion of delivery of the materials or
407 supplies; however, such an action may not be instituted until
408 one of the following conditions is satisfied:

409 (a) The public entity has paid out the claimant's retainage
410 to the contractor, and the time provided under s. 218.735 or s.
411 255.073(3) for payment of that retainage to the claimant has
412 expired;

413 (b) The claimant has completed all work required under its
414 contract and 70 days have passed since the contractor sent its
415 final payment request to the public entity; or

416 (c) At least 160 days have passed since reaching
417 substantial completion of the construction services purchased,
418 as defined in the contract, or if not defined in the contract,
419 since reaching beneficial occupancy or use of the project.



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420 (d) The claimant has asked the contractor, in writing, for
421 any of the following information and the contractor has failed
422 to respond to the claimant's request, in writing, within 10 days
423 after receipt of the request:

424 1. Whether the project has reached substantial completion,
425 as that term is defined in the contract, or if not defined in
426 the contract, if beneficial occupancy or use of the project has
427 occurred.

428 2. Whether the contractor has received payment of the
429 claimant's retainage, and if so, the date the retainage was
430 received by the contractor.

431 3. Whether the contractor has sent its final payment
432 request to the public entity, and if so, the date on which the
433 final payment request was sent.

434
435 If none of the conditions described in paragraph (a), paragraph
436 (b), paragraph (c), or paragraph (d) is satisfied and an action
437 for recovery of retainage cannot be instituted within the 1-year
438 limitation period set forth in this subsection, this limitation
439 period shall be extended until 120 days after one of these
440 conditions is satisfied.

441 (11) When a contractor furnishes and records a payment and
442 performance bond for a public works project in accordance with
443 this section, the public authority may not condition its
444 payments to the contractor on the production of a release,
445 waiver, or like documentation from a claimant demonstrating that
446 the claimant does not have an outstanding claim against the
447 contractor, the surety, the payment bond, or the public
448 authority for payments due on labor, services, or materials



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449 furnished on the public works project.

450 Section 3. Paragraph (b) of subsection (2) of section
451 713.10, Florida Statutes, is amended to read:

452 713.10 Extent of liens.—

453 (2)

454 (b) The interest of the lessor ~~is shall~~ not ~~be~~ subject to
455 liens for improvements made by the lessee when:

456 1. The lease, or a short form or a memorandum of the lease
457 that contains the specific language in the lease prohibiting
458 such liability, is recorded in the official records of the
459 county where the premises are located before the recording of a
460 notice of commencement for improvements to the premises and the
461 terms of the lease expressly prohibit such liability; or

462 2. The terms of the lease expressly prohibit such
463 liability, and a notice advising that leases for the rental of
464 premises on a parcel of land prohibit such liability has been
465 recorded in the official records of the county in which the
466 parcel of land is located before the recording of a notice of
467 commencement for improvements to the premises, and the notice
468 includes the following:

469 a. The name of the lessor.

470 b. The legal description of the parcel of land to which the
471 notice applies.

472 c. The specific language contained in the various leases
473 prohibiting such liability.

474 d. A statement that all or a majority of the leases entered
475 into for premises on the parcel of land expressly prohibit such
476 liability.

477 3. The lessee is a mobile home owner who is leasing a



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478 mobile home lot in a mobile home park from the lessor.

479

480 A notice that is consistent with subparagraph 2. effectively
481 prohibits liens for improvements made by a lessee even if other
482 leases for premises on the parcel do not expressly prohibit
483 liens or if provisions of each lease restricting the application
484 of liens are not identical.

485 Section 4. Paragraphs (d) and (e) of subsection (1) of
486 section 713.13, Florida Statutes, are amended to read:

487 713.13 Notice of commencement.—

488 (1)

489 (d) A notice of commencement must be in substantially the
490 following form:

491

492 Permit No.....

Tax Folio No.....

493 NOTICE OF COMMENCEMENT

494 State of....

495 County of....

496

497 The undersigned hereby gives notice that improvement will be
498 made to certain real property, and in accordance with Chapter
499 713, Florida Statutes, the following information is provided in
500 this Notice of Commencement.

501 1. Description of property: ...(legal description of the
502 property, and street address if available)....

503 2. General description of improvement:.....

504 3. Owner information or Lessee information if the Lessee
505 contracted for the improvement:

506 a. Name and address:.....



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507 b. Interest in property:.....
508 c. Name and address of fee simple titleholder (if different
509 from Owner listed above):.....
510 4.a. Contractor: ...(name and address)....
511 b. Contractor's phone number:.....
512 5. Surety (if applicable, a copy of the payment bond is
513 attached):
514 a. Name and address:.....
515 b. Phone number:.....
516 c. Amount of bond: \$.....
517 6.a. Lender: ...(name and address)....
518 b. Lender's phone number:.....
519 7. Persons within the State of Florida designated by Owner
520 upon whom notices or other documents may be served as provided
521 by Section 713.13(1)(a)7., Florida Statutes:
522 a. Name and address:.....
523 b. Phone numbers of designated persons:.....
524 8.a. In addition to himself or herself, Owner designates
525 of to receive a copy of the Lienor's
526 Notice as provided in Section 713.13(1)(b), Florida Statutes.
527 b. Phone number of person or entity designated by
528 owner:.....
529 9. Expiration date of notice of commencement (the
530 expiration date ~~may not be before the completion of construction~~
531 ~~and final payment to the contractor, but~~ will be 1 year from the
532 date of recording unless a different date is specified).....
533
534 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
535 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER



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536 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
537 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
538 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
539 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
540 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
541 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
542 COMMENCEMENT.

543
544 ~~Under penalty of perjury, I declare that I have read the~~
545 ~~foregoing notice of commencement and that the facts stated~~
546 ~~therein are true to the best of my knowledge and belief.~~

547
548 ... (Signature of Owner or Lessee, or Owner's or Lessee's
549 Authorized Officer/Director/Partner/Manager) ...

550
551 ... (Signatory's Title/Office) ...

552
553 The foregoing instrument was acknowledged before me this
554 day of, ...(year)..., by ...(name of person)... as ...(type
555 of authority, . . . e.g. officer, trustee, attorney in fact)...
556 for ...(name of party on behalf of whom instrument was
557 executed)....

558
559 ... (Signature of Notary Public - State of Florida) ...

560
561 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

562
563 Personally Known OR Produced Identification

564



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565 Type of Identification Produced.....
566

567 (e) A copy of any payment bond must be attached at the time
568 of recordation of the notice of commencement. The failure to
569 attach a copy of the bond to the notice of commencement when the
570 notice is recorded negates the exemption provided in s.
571 713.02(6). However, if a payment bond under s. 713.23 exists but
572 was not attached at the time of recordation of the notice of
573 commencement, the bond may be used to transfer any recorded lien
574 of a lienor except that of the contractor by the recordation and
575 service of a notice of bond pursuant to s. 713.23(2). The notice
576 requirements of s. 713.23 apply to any claim against the bond;
577 however, the time limits for serving any required notices shall,
578 at the option of the lienor, be calculated from the dates begin
579 running from the later of the time specified in s. 713.23 or the
580 date the notice of bond is served on the lienor.

581 Section 5. Subsections (1) and (4) of section 713.132,
582 Florida Statutes, are amended to read:

583 713.132 Notice of termination.-

584 (1) An owner may terminate the period of effectiveness of a
585 notice of commencement by executing, swearing to, and recording
586 a notice of termination that contains:

587 (a) The same information as the notice of commencement;

588 (b) The recording office document book and page reference
589 numbers and date of the notice of commencement;

590 (c) A statement of the date as of which the notice of
591 commencement is terminated, which date may not be earlier than
592 30 days after the notice of termination is recorded;

593 (d) A statement specifying that the notice applies to all



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594 the real property subject to the notice of commencement or
595 specifying the portion of such real property to which it
596 applies;

597 (e) A statement that all lienors have been paid in full;
598 and

599 (f) A statement that the owner has, before recording the
600 notice of termination, served a copy of the notice of
601 termination on the contractor and on each lienor who has a
602 direct contract with the owner or who has served a notice to
603 owner given notice. The owner is not required to serve a copy of
604 the notice of termination on any lienor who has executed a
605 waiver and release of lien upon final payment in accordance with
606 s. 713.20.

607 (4) A notice of termination is effective to terminate the
608 notice of commencement at the later of 30 days after recording
609 of the notice of termination or the date stated in the notice of
610 termination as the date on which the notice of commencement is
611 terminated, if provided that the notice of termination has been
612 served pursuant to paragraph (1)(f) on the contractor and on
613 each lienor who has a direct contract with the owner or who has
614 served a notice to owner given notice.

615 Section 6. Section 713.16, Florida Statutes, is amended to
616 read:

617 713.16 Demand for copy of contract and statements of
618 account; form.—

619 (1) A copy of the contract of a lienor or owner and a
620 statement of the amount due or to become due if fixed or
621 ascertainable thereon must be furnished by any party thereto,
622 upon written demand of an owner or a lienor contracting with or



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623 employed by the other party to such contract. If the owner or
624 lienor refuses or neglects to furnish such copy of the contract
625 or such statement, or willfully and falsely states the amount
626 due or to become due if fixed or ascertainable under such
627 contract, any person who suffers any detriment thereby has a
628 cause of action against the person refusing or neglecting to
629 furnish the same or willfully and falsely stating the amount due
630 or to become due for his or her damages sustained thereby. The
631 information contained in such copy or statement furnished
632 pursuant to such written demand is binding upon the owner or
633 lienor furnishing it unless actual notice of any modification is
634 given to the person demanding the copy or statement before such
635 person acts in good faith in reliance on it. The person
636 demanding such documents must pay for the reproduction thereof;
637 and, if such person fails or refuses to do so, he or she is
638 entitled only to inspect such documents at reasonable times and
639 places.

640 (2) The owner may serve in writing a demand of any lienor
641 for a written statement under oath of his or her account showing
642 the nature of the labor or services performed and to be
643 performed, if any, the materials furnished, the materials to be
644 furnished, if known, the amount paid on account to date, the
645 amount due, and the amount to become due, if known, as of the
646 date of the statement by the lienor. Any such demand to a lienor
647 must be served on the lienor at the address and to the attention
648 of any person who is designated to receive the demand in the
649 notice to owner served by such lienor and must include a
650 description of the property and the names of the owner, the
651 contractor, and the lienor's customer, as set forth in the



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652 lienor's notice to owner. The failure or refusal to furnish the
653 statement does not deprive the lienor of his or her lien if the
654 demand is not served at the address of the lienor or directed to
655 the attention of the person designated to receive the demand in
656 the notice to owner. The failure or refusal to furnish the
657 statement under oath within 30 days after the demand, or the
658 furnishing of a false or fraudulent statement, deprives the
659 person so failing or refusing to furnish such statement of his
660 or her lien. If the owner serves more than one demand for
661 statement of account on a lienor and none of the information
662 regarding the account has changed since the lienor's last
663 response to a demand, the failure or refusal to furnish such
664 statement does not deprive the lienor of his or her lien. The
665 negligent inclusion or omission of any information deprives the
666 person of his or her lien to the extent the owner can
667 demonstrate prejudice from such act or omission by the lienor.
668 The failure to furnish a response to a demand for statement of
669 account does not affect the validity of any claim of lien being
670 enforced through a foreclosure case filed before ~~prior to~~ the
671 date the demand for statement is received by the lienor.

672 (3) A request for sworn statement of account must be in
673 substantially the following form:

674
675 REQUEST FOR SWORN STATEMENT OF ACCOUNT

676
677 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
678 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
679 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

680



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681 To: ...(Lienor's name and address)...

682
683 The undersigned hereby demands a written statement under oath of
684 his or her account showing the nature of the labor or services
685 performed and to be performed, if any, the materials furnished,
686 the materials to be furnished, if known, the amount paid on
687 account to date, the amount due, and the amount to become due,
688 if known, as of the date of the statement for the improvement of
689 real property identified as ...(property description)....

690
691 ...(name of contractor)...

692
693 ...(name of the lienor's customer, as set forth in the
694 lienor's Notice to Owner, if such notice has been served)...

695
696
697 ...(signature and address of owner)...
698 ...(date of request for sworn statement of account)...

699
700
701 (4) When a contractor has furnished a payment bond pursuant
702 to s. 713.23, he or she may, when an owner makes any payment to
703 the contractor or directly to a lienor, serve a written demand
704 on any other lienor for a written statement under oath of his or
705 her account showing the nature of the labor or services
706 performed and to be performed, if any, the materials furnished,
707 the materials to be furnished, if known, the amount paid on
708 account to date, the amount due, and the amount to become due,
709 if known, as of the date of the statement by the lienor. Any



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710 such demand to a lienor must be served on the lienor at the
711 address and to the attention of any person who is designated to
712 receive the demand in the notice to contractor served by such
713 lienor. The demand must include a description of the property
714 and the names of the owner, the contractor, and the lienor's
715 customer, as set forth in the lienor's notice to contractor. The
716 failure or refusal to furnish the statement does not deprive the
717 lienor of his or her rights under the bond if the demand is not
718 served at the address of the lienor or directed to the attention
719 of the person designated to receive the demand in the notice to
720 contractor. The failure to furnish the statement within 30 days
721 after the demand, or the furnishing of a false or fraudulent
722 statement, deprives the person who fails to furnish the
723 statement, or who furnishes the false or fraudulent statement,
724 of his or her rights under the bond. If the contractor serves
725 more than one demand for statement of account on a lienor and
726 none of the information regarding the account has changed since
727 the lienor's last response to a demand, the failure or refusal
728 to furnish such statement does not deprive the lienor of his or
729 her rights under the bond. The negligent inclusion or omission
730 of any information deprives the person of his or her rights
731 under the bond to the extent the contractor can demonstrate
732 prejudice from such act or omission by the lienor. The failure
733 to furnish a response to a demand for statement of account does
734 not affect the validity of any claim on the bond being enforced
735 in a lawsuit filed prior to the date the demand for statement of
736 account is received by the lienor.

737 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
738 ~~recorded a claim of lien~~ may serve with the claim of lien or



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739 thereafter a ~~make~~ written demand on the owner for a written
740 statement under oath showing:

741 1. The amount of the direct contract under which the lien
742 was recorded;

743 2. The dates and amounts paid or to be paid by or on behalf
744 of the owner for all improvements described in the direct
745 contract;

746 3. The reasonable estimated costs of completing the direct
747 contract under which the lien was claimed pursuant to the scope
748 of the direct contract; and

749 4. If known, the actual cost of completion.

750 (b) Any owner who does not provide the statement within 30
751 days after demand, or who provides a false or fraudulent
752 statement, is not a prevailing party for purposes of an award of
753 attorney ~~attorney's~~ fees under s. 713.29. The written demand
754 must include the following warning in conspicuous type in
755 substantially the following form:

756
757 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN
758 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN
759 THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO
760 ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS
761 STATEMENT.

762 (6) Any written demand served on the owner must include a
763 description of the property and the names of the contractor and
764 the lienor's customer, as set forth in the lienor's notice to
765 owner.

766 (7) ~~(6)~~ For purposes of this section, the term "information"
767 means the nature and quantity of the labor, services, and



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768 materials furnished or to be furnished by a lienor and the
769 amount paid, the amount due, and the amount to become due on the
770 lienor's account.

771 Section 7. Section 713.18, Florida Statutes, is amended to
772 read:

773 713.18 Manner of serving notices and other instruments.—

774 (1) Service of notices, claims of lien, affidavits,
775 assignments, and other instruments permitted or required under
776 this part, or copies thereof when so permitted or required,
777 unless otherwise specifically provided in this part, must be
778 made by one of the following methods:

779 (a) By actual delivery to the person to be served; if a
780 partnership, to one of the partners; if a corporation, to an
781 officer, director, managing agent, or business agent; or, if a
782 limited liability company, to a member or manager.

783 (b) By common carrier delivery service or ~~sending the same~~
784 by registered, Global Express Guaranteed, or certified mail,
785 with postage or shipping paid by the sender and prepaid, or by
786 ~~overnight or second-day delivery~~ with evidence of delivery,
787 which may be in an electronic format.

788 (c) ~~If the method specified in paragraph (a) or paragraph~~
789 ~~(b) cannot be accomplished~~, By posting on the site of the
790 improvement if service as provided by paragraph (a) or paragraph
791 (b) cannot be accomplished premises.

792 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
793 to owner or, a notice to contractor under s. 713.23, s. 337.18,
794 or a ~~preliminary notice~~ under s. 255.05 is mailed by registered
795 or certified mail with postage prepaid to the person to be
796 served at any of the addresses set forth in subsection (3)



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797 ~~within 40 days after the date the lienor first furnishes labor,~~
798 ~~services, or materials, service of that notice is~~ effective as
799 of the date of mailing if:

800 (a) The notice is mailed by registered, Global Express
801 Guaranteed, or certified mail, with postage prepaid, to the
802 person to be served at any of the addresses set forth in
803 subsection (3);

804 (b) The notice is mailed within 40 days after the date the
805 lienor first furnishes labor, services, or materials; and

806 (c)1. The person who served the notice maintains a
807 registered or certified mail log that shows the registered or
808 certified mail number issued by the United States Postal
809 Service, the name and address of the person served, and the date
810 stamp of the United States Postal Service confirming the date of
811 mailing; or ~~if~~

812 2. The person who served the notice maintains electronic
813 tracking records generated ~~by through use of~~ the United States
814 Postal Service ~~Confirm service or a similar service~~ containing
815 the postal tracking number, the name and address of the person
816 served, and verification of the date of receipt by the United
817 States Postal Service.

818 (3) (a) ~~Service of If~~ an instrument ~~served~~ pursuant to this
819 section ~~is effective on the date of mailing the instrument if~~
820 it:

821 1. Is sent to the last address shown in the notice of
822 commencement or any amendment thereto or, in the absence of a
823 notice of commencement, to the last address shown in the
824 building permit application, or to the last known address of the
825 person to be served; and, ~~is not received, but~~



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826 2. Is returned as being "refused," "moved, not
827 forwardable," or "unclaimed," or is otherwise not delivered or
828 deliverable through no fault of the person serving the item,
829 ~~then service is effective on the date the instrument was sent.~~

830 (b) If the address shown in the notice of commencement or
831 any amendment to the notice of commencement, or, in the absence
832 of a notice of commencement, in the building permit application,
833 is incomplete for purposes of mailing or delivery, the person
834 serving the item may complete the address and properly format it
835 according to United States Postal Service addressing standards
836 using information obtained from the property appraiser or
837 another public record without affecting the validity of service
838 under this section.

839 (4) A notice served by a lienor on one owner or one partner
840 of a partnership owning the real property ~~If the real property~~
841 ~~is owned by more than one person or a partnership, a lienor may~~
842 ~~serve any notices or other papers under this part on any one of~~
843 ~~such owners or partners, and such notice is deemed notice to all~~
844 owners and partners.

845 Section 8. Section 713.22, Florida Statutes, is amended to
846 read:

847 713.22 Duration of lien.—

848 (1) A ~~no~~ lien provided by this part does not shall continue
849 for a longer period than 1 year after the claim of lien has been
850 recorded or 1 year after the recording of an amended claim of
851 lien that shows a later date of final furnishing of labor,
852 services, or materials, unless within that time an action to
853 enforce the lien is commenced in a court of competent
854 jurisdiction. A lien that has been continued beyond the 1-year



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855 period ~~The continuation of the lien effected~~ by the commencement
856 of ~~an~~ the action ~~is shall~~ not enforceable ~~be good~~ against
857 creditors or subsequent purchasers for a valuable consideration
858 and without notice, unless a notice of lis pendens is recorded.

859 (2) An owner or the owner's ~~agent or~~ attorney may elect to
860 shorten the time prescribed in subsection (1) within which to
861 commence an action to enforce any claim of lien or claim against
862 a bond or other security under s. 713.23 or s. 713.24 by
863 recording in the clerk's office a notice in substantially the
864 following form:

865
866 NOTICE OF CONTEST OF LIEN

867 To: ...(Name and address of lienor)...

868 You are notified that the undersigned contests the claim of lien
869 filed by you on, ...(year)...., and recorded in Book
870, Page, of the public records of County, Florida,
871 and that the time within which you may file suit to enforce your
872 lien is limited to 60 days from the date of service of this
873 notice. This day of, ...(year)....

874 Signed: ...(Owner or Attorney)...

875
876 The lien of any lienor upon whom such notice is served and who
877 fails to institute a suit to enforce his or her lien within 60
878 days after service of such notice shall be extinguished
879 automatically. The clerk shall serve, in accordance with s.
880 713.18, mail a copy of the notice of contest to the lien
881 claimant at the address shown in the claim of lien or most
882 recent amendment thereto and shall certify to such service and
883 the date of service on the face of the ~~such~~ notice and record



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884 the notice. ~~Service shall be deemed complete upon mailing.~~
885 Section 9. Paragraphs (c), (d), (e), and (f) of subsection
886 (1) and subsections (2) and (4) of section 713.23, Florida
887 Statutes, are amended to read:
888 713.23 Payment bond.—
889 (1)
890 (c) ~~Either~~ Before beginning or within 45 days after
891 beginning to furnish labor, materials, or supplies, a lienor who
892 is not in privity with the contractor, except a laborer, shall
893 serve the contractor with notice in writing that the lienor will
894 look to the contractor's bond for protection on the work. If a
895 notice of commencement with the attached bond is not recorded
896 before commencement of construction, ~~or a reference to the bond~~
897 ~~is not given in the notice of commencement~~, and in either case
898 ~~if the lienor not in privity with the contractor is not~~
899 ~~otherwise notified in writing of the existence of the bond~~, the
900 lienor not in privity with the contractor may, in the
901 alternative, elect to serve the notice to the contractor up to
902 shall have 45 days after from the date the lienor is served with
903 a copy notified of the existence of the bond ~~within which to~~
904 ~~serve the notice~~. A notice to owner pursuant to s. 713.06 which
905 has been timely served on the contractor satisfies the
906 requirements of this paragraph. In no event, however, shall the
907 limitation period for commencement of an action on the payment
908 bond as established in paragraph (e) be expanded. The notice may
909 be in substantially the following form and may be combined with
910 a notice to owner given under s. 713.06 and, if so, may be
911 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR":
912



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941

NOTICE TO CONTRACTOR

To ... (name and address of contractor) ...

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

... (general description of services or materials) ... for the improvement of the real property identified as ... (property description) ... under an order given by ... (lienor's customer)

This notice is to inform you that the undersigned intends to look to the contractor's bond to secure payment for the furnishing of materials or services for the improvement of the real property.

... (name of lienor) ...

... (signature of lienor or lienor's representative) ...

... (date) ...

... (lienor's address) ...

~~The undersigned notifies you that he or she has furnished or is furnishing ... (services or materials) ... for the improvement of the real property identified as ... (property description) ... owned by ... (owner's name and address) ... under an order given by and that the undersigned will look to the contractor's bond for protection on the work.~~



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942
943 ~~... (Lienor's signature and address) ...~~
944

945 (d) In addition, a lienor is required, as a condition
946 precedent to recovery under the bond, to serve a written notice
947 of nonpayment to the contractor and the surety not later than 90
948 days after the final furnishing of labor, services, or materials
949 by the lienor. A written notice satisfies this condition
950 precedent with respect to the payment described in the notice of
951 nonpayment, including unpaid finance charges due under the
952 lienor's contract, and with respect to any other payments which
953 become due to the lienor after the date of the notice of
954 nonpayment. The time period for serving a written notice of
955 nonpayment shall be measured from the last day of furnishing
956 labor, services, or materials by the lienor and shall not be
957 measured by other standards, such as the issuance of a
958 certificate of occupancy or the issuance of a certificate of
959 substantial completion. The failure of a lienor to receive
960 retainage sums not in excess of 10 percent of the value of
961 labor, services, or materials furnished by the lienor is not
962 considered a nonpayment requiring the service of the notice
963 provided under this paragraph. If the payment bond is not
964 recorded before commencement of construction, the time period
965 for the lienor to serve a notice of nonpayment may at the option
966 of the lienor be calculated from the date specified in this
967 section or the date the lienor is served a copy of the bond.
968 However, the limitation period for commencement of an action on
969 the payment bond as established in paragraph (e) may not be
970 expanded. The notice under this paragraph may be in



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971 substantially the following form:

972

973 NOTICE OF NONPAYMENT

974

975 To ...(name of contractor and address)...

976

977 ...(name of surety and address)...

978

979 The undersigned notifies you that he or she has furnished

980 ...(describe labor, services, or materials)... for the

981 improvement of the real property identified as ...(property

982 description).... The amount now due and unpaid is \$.....

983

984 ...(signature and address of lienor)...

985

986 (e) An ~~No~~ action for the labor or materials or supplies may

987 not be instituted or prosecuted against the contractor or surety

988 unless both notices have been given, if required by this

989 section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted

990 against the contractor or against the surety on the bond under

991 this section after 1 year from the performance of the labor or

992 completion of delivery of the materials and supplies. The time

993 period for bringing an action against the contractor or surety

994 on the bond shall be measured from the last day of furnishing

995 labor, services, or materials by the lienor. The time period ~~and~~

996 may ~~shall~~ not be measured by other standards, such as the

997 issuance of a certificate of occupancy or the issuance of a

998 certificate of substantial completion. A contractor or the

999 contractor's ~~agent or~~ attorney may elect to shorten the



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1000 ~~prescribed~~ time within which an action to enforce any claim
1001 against a payment bond provided under this section or s. 713.245
1002 must ~~may~~ be commenced at any time after a notice of nonpayment,
1003 if required, has been served for the claim by recording in the
1004 clerk's office a notice in substantially the following form:

1005
1006 NOTICE OF CONTEST OF CLAIM
1007 AGAINST PAYMENT BOND
1008

1009 To: ...(Name and address of lienor)...

1010 You are notified that the undersigned contests your notice
1011 of nonpayment, dated,, and served on the undersigned
1012 on,, and that the time within which you may file suit
1013 to enforce your claim is limited to 60 days from the date of
1014 service of this notice.

1015
1016 DATED on,

1017
1018 Signed: ...(Contractor or Attorney)...

1019
1020 The claim of any lienor upon whom the notice is served and who
1021 fails to institute a suit to enforce his or her claim against
1022 the payment bond within 60 days after service of the notice
1023 shall be extinguished automatically. The contractor or the
1024 contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the
1025 notice of contest to the lienor at the address shown in the
1026 notice of nonpayment or most recent amendment thereto and shall
1027 certify to such service on the face of the notice and record the
1028 notice. ~~Service is complete upon mailing.~~



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1029 (f) A ~~Any~~ lienor has a direct right of action on the bond
1030 against the surety. Any provision in a payment bond which
1031 further restricts ~~A bond must not contain any provisions~~
1032 ~~restricting~~ the classes of persons who are protected by the
1033 payment bond, which restricts thereby or the venue of any
1034 proceeding relating to such payment bond, which limits or
1035 expands the effective duration of the payment bond, or which
1036 adds conditions precedent to the enforcement of a claim against
1037 a payment bond beyond those provided in this part is
1038 unenforceable. The surety is not entitled to the defense of pro
1039 tanto discharge as against any lienor because of changes or
1040 modifications in the contract to which the surety is not a
1041 party; but the liability of the surety may not be increased
1042 beyond the penal sum of the bond. A lienor may not waive in
1043 advance his or her right to bring an action under the bond
1044 against the surety.

1045 (2) The bond shall secure every lien under the direct
1046 contract accruing subsequent to its execution and delivery,
1047 except that of the contractor. Every claim of lien, except that
1048 of the contractor, filed subsequent to execution and delivery of
1049 the bond shall be transferred to it with the same effect as
1050 liens transferred under s. 713.24. Record notice of the transfer
1051 shall be effected by the contractor, or any person having an
1052 interest in the property against which the claim of lien has
1053 been asserted, by recording in the clerk's office a notice, with
1054 the bond attached, in substantially the following form:

1055
1056 NOTICE OF BOND
1057



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1058 To ... (Name and Address of Lienor)...

1059
1060 You are notified that the claim of lien filed by you on,
1061, and recorded in Official Records Book at page of
1062 the public records of County, Florida, is secured by a
1063 bond, a copy being attached.

1064
1065 Signed: ... (Name of person recording notice)...

1066
1067 The notice shall be verified. The person recording the notice of
1068 bond clerk shall serve mail a copy of the notice with a copy of
1069 the bond to the lienor at the address shown in the claim of
1070 lien, or the most recent amendment to it; shall certify to the
1071 service on the face of the notice; and shall record the notice.
1072 ~~The clerk shall receive the same fee as prescribed in s.~~
1073 ~~713.24(1) for certifying to a transfer of lien.~~

1074 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds
1075 under this section except when those provisions conflict with
1076 this section.

1077 Section 10. This act shall take effect October 1, 2012.

1078
1079 ===== T I T L E A M E N D M E N T =====

1080 And the title is amended as follows:

1081
1082 Delete everything before the enacting clause
1083 and insert:

1084 A bill to be entitled
1085 An act relating to construction liens and bonds;
1086 amending s. 95.11, F.S.; adding a cross-reference;



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1087 deleting a provision for the limitation of actions
1088 against a bond; amending s. 255.05, F.S.; requiring
1089 that the bond number be stated on the first page of
1090 the bond; providing that a provision in a payment bond
1091 furnished for a public works contract that limits or
1092 expands the effective duration of the bond or adds
1093 conditions precedent is unenforceable; requiring a
1094 contractor, or the contractor's attorney, to serve
1095 rather than mail a notice of contest of claim against
1096 the payment bond; providing additional time for
1097 service when the bond is not recorded; specifying the
1098 duration of the bond; providing that payment to a
1099 contractor who has furnished a payment bond on a
1100 public works project may not be conditioned upon
1101 production of certain documents; providing
1102 prerequisites for commencement of an action against a
1103 payment bond; amending s. 713.10, F.S.; providing that
1104 a specified notice concerning a lessor's liability for
1105 liens for improvements made by the lessee prohibits
1106 liens even if other leases do not expressly prohibit
1107 liens or if certain other provisions are not
1108 identical; amending s. 713.13, F.S.; revising a notice
1109 form to clarify that the notice of commencement
1110 expires 1 year after the date of recording; removing a
1111 perjury clause; providing additional time for service
1112 when a notice of commencement is not recorded with a
1113 copy of the bond attached; amending s. 713.132, F.S.;
1114 requiring notice of termination to be served on
1115 lienors in privity with the owner; amending s. 713.16,



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1116 F.S.; revising requirements for demands for a copy of
1117 a construction contract and a statement of account;
1118 authorizing a lienor to make certain written demands
1119 to an owner for certain written statements; providing
1120 requirements for such written demands; amending s.
1121 713.18, F.S.; providing additional methods by which
1122 certain items may be served; revising provisions
1123 relating to when service of specified items is
1124 effective; specifying requirements for certain written
1125 instruments under certain circumstances; amending s.
1126 713.22, F.S.; requiring that the clerk serve rather
1127 than mail a notice of contest of lien; amending s.
1128 713.23, F.S.; revising the contents of a notice to
1129 contractor; requiring that a contractor serve rather
1130 than mail a notice of contest of claim against the
1131 payment bond and a notice of bond; clarifying the
1132 attachment of the bond to the notice; providing that a
1133 provision in a payment bond that limits or expands the
1134 effective duration of the bond or adds conditions
1135 precedent is unenforceable; clarifying applicability
1136 of certain provisions; providing an effective date.



131190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

Senate Amendment to Amendment (214198)

Delete line 100

and insert:

is granted, the officer or official is ~~officials shall~~ not be personally

Delete line 172

and insert:

the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the notice



416158

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

1 **Senate Amendment to Amendment (214198) (with title**
2 **amendment)**

3
4 Between lines 449 and 450
5 insert:

6 Section 3. Section 255.0518, Florida Statutes, is created
7 to read:

8 255.0518 Public bids; bid opening.—Notwithstanding s.
9 119.071(1)(b), the state or any county or municipality thereof
10 or any department or agency of the state, county, or
11 municipality or any other public body or institution, shall:

12 (1) Open sealed bids received pursuant to a competitive
13 solicitation for construction or repairs on a public building or



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14 public work at a public meeting conducted in compliance with s.
15 286.011.

16 (2) Announce at that meeting the name of each bidder and
17 the price submitted.

18 (3) Make available upon request the name of each bidder and
19 the price submitted.

20

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

22 And the title is amended as follows:

23 Delete line 1103

24 and insert:

25 payment bond; creating s. 255.0518, F.S.; requiring
26 that the state, a county, a municipality, or any other
27 public body or institution open sealed bids received
28 in response to a competitive solicitation at a public
29 meeting, announce the name of each bidder and the
30 price submitted, and make available upon request the
31 names of bidders and submitted prices; amending s.
32 713.10, F.S.; providing that

By Senator Bogdanoff

25-00695A-12

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1 A bill to be entitled
 2 An act relating to construction liens and bonds;
 3 amending s. 255.05, F.S.; requiring that the bond
 4 number be stated on the first page of a payment and
 5 performance bond relating to a public works
 6 construction project; providing that a provision that
 7 limits the effective duration of the bond is
 8 unenforceable; requiring that a contractor serve a
 9 notice of contest to a claimant against the bond;
 10 extending the time period for a claimant to serve a
 11 notice to contractor or a notice of nonpayment or to
 12 file suit against the contractor or surety if the bond
 13 is not recorded or if the claimant was not notified of
 14 the existence of the bond in writing; requiring that a
 15 claimant who is not in privity with a contractor serve
 16 the notice of nonpayment on the contractor and the
 17 surety; making organizational and technical changes;
 18 amending s. 713.132, F.S.; requiring that an owner
 19 serve a copy of a notice of termination on each lienor
 20 who has a direct contract with the owner before a
 21 notice of termination may take effect; amending s.
 22 713.16, F.S.; requiring that an owner or contract
 23 provide specified information sufficient for a lienor
 24 to properly identify an account when a sworn statement
 25 of account is requested; deleting a requirement that a
 26 lienor have recorded a lien before the lienor may
 27 demand an accounting from the owner; requiring that
 28 the demand for an accounting which is served on the
 29 owner include specified information sufficient for the

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30 owner to identify the project in question; amending s.
 31 713.18, F.S.; providing additional methods by which
 32 certain items may be served; specifying the effective
 33 date of the service of a notice that is served;
 34 authorizing a person who serves an item to correct an
 35 address under certain circumstances; amending s.
 36 713.22, F.S.; requiring that the owner or owner's
 37 attorney serve a notice of contest of lien; amending
 38 s. 713.23, F.S.; authorizing the use of a combined
 39 notice to owner and notice to contractor form;
 40 revising the format of the notice to contractor;
 41 requiring that the contractor or the contractor's
 42 attorney serve the notice of contest; providing that a
 43 provision of a payment bond which restricts the
 44 classes of lienors and the effective duration of the
 45 bond is unenforceable; requiring that the person who
 46 records in the clerk's office a notice of a transfer
 47 of lien to a payment bond attach a copy of the bond;
 48 requiring that the person recording the notice of bond
 49 serve a copy of the notice along with a copy of the
 50 bond; specifying the relationship of provisions
 51 relating to payment bonds with other laws; making
 52 technical changes; providing an effective date.

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

55
 56 Section 1. Subsection (1), paragraph (a) of subsection (2),
 57 and subsection (10) of section 255.05, Florida Statutes, are
 58 amended to read:

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59 255.05 Bond of contractor constructing public buildings;
60 form; action by materialmen.—

61 (1) ~~(a)~~ Any person entering into a formal contract with the
62 state or any county, municipality city, or political subdivision
63 thereof, or other public authority or private entity, for the
64 construction of a public building, for the prosecution and
65 completion of a public work, or for repairs upon a public
66 building or public work must ~~shall be required~~, before
67 commencing the work or before recommencing the work after a
68 default or abandonment, ~~to~~ execute and, deliver to the public
69 owner, ~~and record in the public records of the county where the~~
70 ~~improvement is located~~, a payment and performance bond with a
71 surety insurer authorized to do business in this state as
72 surety.

73 (a) A public entity may not require a contractor to secure
74 a surety bond under this section from a specific agent or
75 bonding company.

76 (b) The payment and performance bond must state on its
77 front page: the name, principal business address, and phone
78 number of the contractor; the surety and the bond number
79 assigned by the surety; ~~the owner of the property being~~
80 improved, and, if different from the owner, the contracting
81 public entity; the contract number assigned by the contracting
82 public entity; and a description of the project sufficient to
83 identify it, such as a legal description or the street address
84 of the property being improved, and a general description of the
85 improvement.

86 (c) The payment and performance ~~Such~~ bond shall be
87 conditioned upon the contractor's performance of the

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88 construction work in the time and manner prescribed in the
89 contract and upon the contractor's prompt ~~promptly making~~
90 payments to all persons defined as a lienor in s. 713.01 who
91 furnish labor, services, or materials for the prosecution of the
92 work provided for in the contract.

93 (d) The contractor shall record the payment and performance
94 bond upon issuance in the official records of the county in
95 which the public works will be located.

96 (e) ~~Any claimant may apply to~~ The governmental entity
97 having charge of the work shall provide a certified copy for
98 copies of the contract and of the bond to any claimant upon
99 request and shall thereupon be furnished with a certified copy
100 of the contract and bond. The claimant has ~~shall have~~ a right of
101 action against the contractor and surety for the amount due him
102 or her, including unpaid finance charges due under the
103 claimant's contract. Such action may ~~shall~~ not involve the
104 public authority in any expense.

105 (f)1. A payment and performance bond is not required for a
106 contract with the state for \$100,000 or less. When such work is
107 done for the state and the contract is for \$100,000 or less, no
108 payment and performance bond shall be required.

109 2. At the discretion of The official or board awarding a
110 such contract ~~when such work is done for a any county,~~
111 municipality city, political subdivision, or public authority
112 may exempt a contract, any person entering into such a contract
113 which is for \$200,000 or less from the requirement for a may be
114 exempted from executing the payment and performance bond.

115 3. When such work is done for the state, The Secretary of
116 Management Services may delegate to a state agency ~~agencies~~ the

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 117 authority to exempt ~~any person entering into such~~ a contract for
 118 ~~amounting to~~ more than \$100,000 but less than \$200,000 from the
 119 requirement for a ~~executing the~~ payment and performance bond. If
 120 ~~In the event~~ such exemption is granted, the officer or officials
 121 ~~are shall~~ not be personally liable to a person who suffers a
 122 ~~persons suffering loss due to the because of granting such~~
 123 exemption. The Department of Management Services shall maintain
 124 information on the number of requests by state agencies for
 125 delegation of authority to waive the bond requirements by agency
 126 and project number and whether any request for delegation was
 127 denied and the justification for the denial.

128 (g) The persons who may be protected by a payment and
 129 performance bond for payments due to them for furnishing labor,
 130 services, or materials for the prosecution of the work are
 131 limited to those persons defined as a lienor in s. 713.01. A Any
 132 provision of ~~in~~ a payment and performance bond furnished for a
 133 public works contract ~~work contracts~~ as provided by this
 134 subsection which further restricts the classes of persons ~~as~~
 135 defined in s. 713.01 protected by the bond or the venue of any
 136 proceeding relating to such bond, or which limits the duration
 137 of the bond, is unenforceable.

138 (h) ~~(b)~~ The Department of Management Services shall adopt
 139 rules with respect to all contracts for \$200,000 or less, to
 140 provide:

141 1. Procedures for retaining up to 10 percent of each
 142 request for payment submitted by a contractor and procedures for
 143 determining disbursements from the amount retained on a pro rata
 144 basis to laborers, materialmen, and subcontractors, as defined
 145 in s. 713.01.

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 146 2. Procedures for requiring certification from laborers,
 147 materialmen, and subcontractors, as defined in s. 713.01, before
 148 ~~prior to~~ final payment to the contractor, that they do not that
 149 ~~such laborers, materialmen, and subcontractors~~ have a claim no
 150 ~~claims~~ against the contractor resulting from the completion of
 151 the work provided for in the contract.
 152

153 The state ~~is shall not be held~~ liable to any laborer,
 154 materialman, or subcontractor for any amount amounts greater
 155 than the pro rata share as determined under this section.

156 (i) ~~(e)~~ 1. The amount of the bond shall equal the contract
 157 price, except that for a contract in excess of \$250 million, if
 158 the state, county, municipality, political subdivision, or other
 159 public entity finds that a bond in the amount of the contract
 160 price is not reasonably available, the public owner shall set
 161 the amount of the bond at the largest amount reasonably
 162 available, but not less than \$250 million.

163 2. For construction-management or design-build contracts,
 164 if the public owner does not include in the bond amount the cost
 165 of design or other nonconstruction services, the bond may not be
 166 conditioned on performance of such services or payment to
 167 persons furnishing such services. Notwithstanding paragraph (g)
 168 ~~(a)~~, such a bond may exclude persons furnishing such services
 169 from the classes of persons protected by the bond.

170 (2) (a) 1. If a claimant is no longer furnishing labor,
 171 services, or materials on a project, a contractor ~~or the~~
 172 ~~contractor's agent or attorney~~ may elect to shorten the
 173 ~~prescribed time in this paragraph~~ within which an action to
 174 enforce any claim against a payment bond must provided pursuant

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175 ~~to this section may~~ be commenced by recording in the clerk's
 176 office a notice in substantially the following form:

177 NOTICE OF CONTEST OF CLAIM
 178 AGAINST PAYMENT BOND

180 To: ...(Name and address of claimant)...

181
 182 You are notified that the undersigned contests your notice
 183 of nonpayment, dated,, and served on the
 184 undersigned on,, and that the time within
 185 which you may file suit to enforce your claim is limited to 60
 186 days after the date of service of this notice.

187
 188 DATED on,

189
 190 Signed:...(Contractor ~~or Attorney~~)...

191
 192 The claim of any claimant upon whom such notice is served and
 193 who fails to institute a suit to enforce his or her claim
 194 against the payment bond within 60 days after service of the
 195 ~~such~~ notice ~~is shall be~~ extinguished automatically. The
 196 ~~contractor clerk~~ shall serve mail a copy of the notice of
 197 contest to the claimant at the address shown in the notice of
 198 nonpayment or the most recent amendment thereto and shall
 199 certify to such service on the face of the such notice and
 200 record the notice. ~~Service is complete upon mailing.~~

201 2.a. A claimant, except a laborer, who is not in privity
 202 with the contractor must shall, before commencing or not later
 203 than 45 days after commencing to furnish labor, services, or

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204 materials for the prosecution of the work, serve furnish the
 205 contractor with a written notice that he or she intends to look
 206 to the bond for protection. If the payment bond is not recorded
 207 before the commencement of construction or if the claimant was
 208 not otherwise notified in writing of the existence of the bond,
 209 the 45-day period runs from the date that the claimant is
 210 notified in writing of the existence of the bond.

211 b. A claimant who is not in privity with the contractor and
 212 who has not received payment for his or her labor, services, or
 213 materials must serve on shall deliver to the contractor and ~~to~~
 214 the surety written notice of the performance of the labor or
 215 services, or the delivery of ~~the~~ materials, ~~or supplies~~ and of
 216 the nonpayment. Any notice of nonpayment served by a claimant
 217 who is not in privity with the contractor which includes sums
 218 for retainage must specify the portion of the amount claimed for
 219 retainage. The notice of nonpayment must may be served at any
 220 time during the progress of the work or thereafter but not
 221 before 45 days after the first furnishing of labor, services, or
 222 materials, and not later than 90 days after the final furnishing
 223 of the labor, services, or materials by the claimant or, with
 224 respect to rental equipment, not later than 90 days after the
 225 date that the rental equipment was last on the job site
 226 available for use. If the payment bond is not recorded before
 227 the commencement of construction or if the claimant was not
 228 otherwise notified in writing of the existence of the bond, the
 229 time periods for serving a notice of nonpayment run from the
 230 date that the claimant is notified in writing of the existence
 231 of the bond. ~~Any notice of nonpayment served by a claimant who~~
 232 ~~is not in privity with the contractor which includes sums for~~

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233 ~~retainage must specify the portion of the amount claimed for~~
 234 ~~retainage.~~

235 c. An ~~No~~ action for ~~the~~ labor, services, or materials, ~~or~~
 236 ~~supplies~~ may not be instituted against the contractor or the
 237 surety unless the notice to the contractor and the notice of
 238 nonpayment ~~both notices~~ have been given, if required by this
 239 section. Service of all notices or other instruments required or
 240 permitted under this section shall ~~may~~ be made served in
 241 accordance with s. 713.18. A claimant may not waive in advance
 242 his or her right to bring an action under the bond against the
 243 surety. In any action brought to enforce a claim against a
 244 payment bond under this section, the prevailing party is
 245 entitled to recover a reasonable fee for the services of his or
 246 her attorney for trial and appeal or for arbitration, in an
 247 amount to be determined by the court, and the ~~which~~ fee must be
 248 taxed as part of the prevailing party's costs, as allowed in
 249 equitable actions. The time periods for service of a notice of
 250 nonpayment or for bringing an action against a contractor or a
 251 surety shall be measured from the last day of furnishing labor,
 252 services, or materials by the claimant and may ~~shall~~ not be
 253 measured by other standards, such as the issuance of a
 254 certificate of occupancy or the issuance of a certificate of
 255 substantial completion.

256 (10) (a) An action, except an action for recovery of
 257 retainage, must be instituted against the contractor or the
 258 surety on the payment bond or the payment provisions of a
 259 combined payment and performance bond within 1 year after the
 260 performance of the labor or completion of delivery of the
 261 materials ~~or supplies~~. If the payment bond is not recorded

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262 before the commencement of construction or if the claimant was
 263 not otherwise notified in writing of the existence of the bond,
 264 the 1-year period runs from the date that the claimant is
 265 notified in writing of the existence of the bond.

266 (b) An action for recovery of retainage must be instituted
 267 against the contractor or the surety within the 1-year period ~~±~~
 268 ~~year~~ after the performance of the labor or completion of
 269 delivery of the materials, as described in paragraph (a) ~~or~~
 270 ~~supplies~~; however, such an action may not be instituted until
 271 one of the following conditions is satisfied:

272 1. (a) The public entity has paid out the claimant's
 273 retainage to the contractor, and the time provided under s.
 274 218.735 or s. 255.073(3) for payment of that retainage to the
 275 claimant has expired.

276 2. (b) The claimant has completed all work required under
 277 its contract and 70 days have passed since the contractor sent
 278 its final payment request to the public entity. ~~or~~

279 3. (c) At least 160 days have passed since reaching
 280 substantial completion of the construction services purchased,
 281 as defined in the contract, or if not defined in the contract,
 282 since reaching beneficial occupancy or use of the project.

283 4. (d) The claimant has asked the contractor, in writing,
 284 for any of the following information and the contractor has
 285 failed to respond to the claimant's request, in writing, within
 286 10 days after receipt of the request:

287 a. 1. Whether the project has reached substantial
 288 completion, as that term is defined in the contract, or if not
 289 defined in the contract, if beneficial occupancy or use of the
 290 project has occurred.

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291 b.2- Whether the contractor has received payment of the
 292 claimant's retainage, and if so, the date the retainage was
 293 received by the contractor.

294 c.3- Whether the contractor has sent its final payment
 295 request to the public entity, and if so, the date on which the
 296 final payment request was sent.

297
 298 If none of the conditions described in subparagraph 1.,
 299 subparagraph 2., subparagraph 3., or subparagraph 4. paragraph
 300 (a), paragraph (b), paragraph (c), or paragraph (d) is satisfied
 301 and an action for recovery of retainage cannot be instituted
 302 within the 1-year limitation period set forth in this
 303 subsection, this limitation period shall be extended until 120
 304 days after one of these conditions is satisfied.

305 Section 2. Section 713.132, Florida Statutes, is amended to
 306 read:

307 713.132 Notice of termination.—

308 (1) An owner may terminate the period of effectiveness of a
 309 notice of commencement by executing, swearing to, and recording
 310 a notice of termination which ~~that~~ contains:

311 (a) The same information as the notice of commencement;

312 (b) The recording office document book and page reference
 313 numbers and date of the notice of commencement;

314 (c) A statement of the date as of which the notice of
 315 commencement is terminated, which date may not be earlier than
 316 30 days after the notice of termination is recorded;

317 (d) A statement specifying that the notice applies to all
 318 the real property subject to the notice of commencement or
 319 specifying the portion of such real property to which it

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320 applies;

321 (e) A statement that all lienors have been paid in full;
 322 and

323 (f) A statement that the owner has, before recording the
 324 notice of termination, served a copy of the notice of
 325 termination on the contractor and on each lienor who has served
 326 a notice to the owner or who has a direct contract with the
 327 owner given notice. The owner is not required to serve a copy of
 328 the notice of termination on any lienor who has executed a
 329 waiver and release of lien upon final payment in accordance with
 330 s. 713.20.

331 (2) An owner has the right to rely on a contractor's
 332 affidavit given under s. 713.06(3)(d), except with respect to
 333 lienors who have already given notice, in connection with the
 334 execution, swearing to, and recording of a notice of
 335 termination. However, the notice of termination must be
 336 accompanied by the contractor's affidavit.

337 (3) An owner may not record a notice of termination except
 338 after completion of construction, or after construction ceases
 339 before completion and all lienors have been paid in full or pro
 340 rata in accordance with s. 713.06(4). If an owner or a
 341 contractor, by fraud or collusion, knowingly makes any
 342 fraudulent statement or affidavit in a notice of termination or
 343 any accompanying affidavit, the owner and the contractor, or
 344 either of them, as the case may be, is liable to any lienor who
 345 suffers damages as a result of the filing of the fraudulent
 346 notice of termination; and any such lienor has a right of action
 347 for damages occasioned thereby.

348 (4) A notice of termination is effective to terminate the

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 349 notice of commencement at the later of 30 days after recording
 350 of the notice of termination or the date stated in the notice of
 351 termination as the date on which the notice of commencement is
 352 terminated, ~~if provided that~~ the notice of termination has been
 353 served pursuant to paragraph (1)(f) on the contractor and on
 354 each lienor who has served a notice to the owner or who has a
 355 direct contract with the owner given notice.

356 Section 3. Section 713.16, Florida Statutes, is amended to
 357 read:

358 713.16 Demand for copy of contract and statements of
 359 account; form.—

360 (1) A copy of the contract of a lienor or owner and a
 361 statement of the amount due or to become due if fixed or
 362 ascertainable thereon must be furnished by any party thereto,
 363 upon written demand of an owner or a lienor contracting with or
 364 employed by the other party to such contract. If the owner or
 365 lienor refuses or neglects to furnish a ~~such~~ copy of the
 366 contract or the such statement, or willfully and falsely states
 367 the amount due or to become due if fixed or ascertainable under
 368 such contract, any person who suffers any detriment thereby has
 369 a cause of action against the person refusing or neglecting to
 370 furnish a copy of the contract or the statement the same or
 371 willfully and falsely stating the amount due or to become due
 372 for his or her damages sustained thereby. The information
 373 contained in the such copy or statement furnished pursuant to a
 374 ~~such~~ written demand is binding upon the owner or lienor
 375 furnishing it unless actual notice of any modification is given
 376 to the person demanding the copy or statement before such person
 377 acts in good faith in reliance on it. The person demanding the

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 378 ~~such~~ documents must pay for the reproduction thereof,⁷ and, if
 379 the such person fails or refuses to do so, he or she is entitled
 380 only to inspect the such documents at reasonable times and
 381 places.

382 (2) The owner may serve in writing a demand of any lienor
 383 for a written statement under oath of his or her account showing
 384 the nature of the labor or services performed and to be
 385 performed, if any, the materials furnished, the materials to be
 386 furnished, if known, the amount paid on account to date, the
 387 amount due, and the amount to become due, if known, as of the
 388 date of the statement by the lienor. Any such demand to a lienor
 389 must be served on the lienor at the address and to the attention
 390 of any person who is designated to receive the demand in the
 391 notice to owner served by such lienor and must include a
 392 description of the project, including the names of the owner,
 393 the contractor, and the lienor's customer, as set forth in the
 394 lienor's notice to owner, sufficient for the lienor to properly
 395 identify the account in question. The failure or refusal to
 396 furnish the statement does not deprive the lienor of his or her
 397 lien if the demand is not served at the address of the lienor or
 398 directed to the attention of the person designated to receive
 399 the demand in the notice to owner. The failure or refusal to
 400 furnish the statement under oath within 30 days after the
 401 demand, or the furnishing of a false or fraudulent statement,
 402 deprives the person so failing or refusing to furnish such
 403 statement of his or her lien. If the owner serves more than one
 404 demand for statement of account on a lienor and none of the
 405 information regarding the account has changed since the lienor's
 406 last response to a demand, the failure or refusal to furnish

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 465 none of the information regarding the account has changed since
 466 the lienor's last response to a demand, the failure or refusal
 467 to furnish such statement does not deprive the lienor of his or
 468 her rights under the bond. The negligent inclusion or omission
 469 of any information deprives the person of his or her rights
 470 under the bond to the extent the contractor can demonstrate
 471 prejudice from such act or omission by the lienor. The failure
 472 to furnish a response to a demand for statement of account does
 473 not affect the validity of any claim on the bond being enforced
 474 in a lawsuit filed before ~~prior to~~ the date the demand for
 475 statement of account is received by the lienor.

476 (5) (a) Any lienor ~~who has recorded a claim of lien~~ may
 477 serve a ~~make~~ written demand on the owner for a written statement
 478 under oath showing:

- 479 1. The amount of the direct contract under which the lien
 480 was recorded;
- 481 2. The dates and amounts paid or to be paid by or on behalf
 482 of the owner for all improvements described in the direct
 483 contract;
- 484 3. The reasonable estimated costs of completing the direct
 485 contract under which the lien was claimed pursuant to the scope
 486 of the direct contract; and
- 487 4. If known, the actual cost of completion.

488 (b) Any owner who does not provide the statement within 30
 489 days after demand, or who provides a false or fraudulent
 490 statement, is not a prevailing party for purposes of an award of
 491 attorney ~~attorney's~~ fees under s. 713.29. The written demand
 492 must include the following warning in conspicuous type in
 493 substantially the following form:

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 494 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT
 495 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL
 496 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY
 497 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING
 498 THIS STATEMENT.

499 (6) Any written demand served on the owner must include a
 500 description of the project, the names of the contractor and the
 501 lienor's customer, as set forth in the lienor's notice to owner,
 502 sufficient for the owner to properly identify the project in
 503 question.

504 (7) ~~(6)~~ For purposes of this section, the term "information"
 505 means the nature and quantity of the labor, services, and
 506 materials furnished or to be furnished by a lienor and the
 507 amount paid, the amount due, and the amount to become due on the
 508 lienor's account.

509 Section 4. Section 713.18, Florida Statutes, is amended to
 510 read:

511 713.18 Manner of serving notices and other instruments.—

512 (1) Service of notices, claims of lien, affidavits,
 513 assignments, and other instruments permitted or required under
 514 this part, or copies thereof when so permitted or required,
 515 unless otherwise specifically provided in this part, must be
 516 made by one of the following methods:

517 (a) By actual delivery to the person to be served; if a
 518 partnership, to one of the partners; if a corporation, to an
 519 officer, director, managing agent, or business agent; or, if a
 520 limited liability company, to a member or manager.

521 (b) By sending the same by common carrier delivery service
 522 or by registered, global express guaranteed, or certified mail,

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 523 with postage or shipping prepaid, ~~and or by overnight or second-~~
 524 ~~day delivery~~ with evidence of delivery, which may be in an
 525 electronic format.

526 (c) ~~If the method specified in paragraph (a) or paragraph~~
 527 ~~(b) cannot be accomplished,~~ By posting on the site of the
 528 improvement if service as provided by paragraph (a) or paragraph
 529 (b) cannot be accomplished premises.

530 (2) Notwithstanding subsection (1), service of if a notice
 531 to owner ~~or,~~ a notice to contractor under s. 255.05, s. 337.18,
 532 or s. 713.23, or a preliminary notice under s. 255.05 is mailed
 533 by registered or certified mail with postage prepaid to the
 534 person to be served at any of the addresses set forth in
 535 subsection (3) within 40 days after the date the lienor first
 536 furnishes labor, services, or materials, service of that notice
 537 is effective as of the date of mailing if:

538 (a) The notice is mailed by registered, global express
 539 guaranteed, or certified mail, with postage or shipping prepaid,
 540 to the person to be served at any of the addresses set forth in
 541 subsection (3);

542 (b) The notice is mailed within 40 days after the date the
 543 lienor first furnishes labor, services, or materials; and

544 (c)1. The person who served the notice maintains a
 545 registered or certified mail log that shows the registered or
 546 certified mail number issued by the United States Postal
 547 Service, the name and address of the person served, and the date
 548 stamp of the United States Postal Service confirming the date of
 549 mailing; ~~or if~~

550 2. The person who served the notice maintains electronic
 551 tracking records generated through use of the United States

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 552 Postal Service Confirm service or a similar service containing
 553 the postal tracking number, the name and address of the person
 554 served, and verification of the date of receipt by the United
 555 States Postal Service.

556 (3) (a) Service of If an instrument ~~served~~ pursuant to this
 557 section is effective on the date of mailing if the instrument:

558 1. Is sent to the last address shown in the notice of
 559 commencement or any amendment thereto or, in the absence of a
 560 notice of commencement, to the last address shown in the
 561 building permit application, or to the last known address of the
 562 person to be served; ~~and, is not received, but~~

563 2. Is returned as being "refused," "moved, not
 564 forwardable," or "unclaimed," or is otherwise not delivered or
 565 deliverable through no fault of the person serving the
 566 instrument item, then service is effective on the date the
 567 instrument was sent.

568 (b) If the address shown in the notice of commencement or
 569 any amendment thereto or, in the absence of a notice of
 570 commencement, in the building permit application, is incomplete
 571 for purposes of mailing or delivery, the person serving the item
 572 may complete the address and properly format it according to the
 573 United States Postal Service addressing standards using
 574 information obtained from the property appraiser or another
 575 public record or directory without affecting the validity of
 576 service under this section.

577 (4) A notice served by a lienor on one owner or one partner
 578 of a partnership owning the real property If the real property
 579 is owned by more than one person or a partnership, a lienor may
 580 serve any notices or other papers under this part on any one of

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581 ~~such owners or partners, and such notice~~ is deemed notice to all
582 owners and partners.

583 Section 5. Section 713.22, Florida Statutes, is amended to
584 read:

585 713.22 Duration of lien.—

586 (1) ~~A~~ No lien provided by this part ~~does not shall~~ continue
587 for a ~~longer~~ longer period longer than 1 year after the claim of lien
588 has been recorded or 1 year after the recording of an amended
589 claim of lien ~~which that~~ shows a later date of final furnishing
590 of labor, services, or materials, unless within that time an
591 action to enforce the lien is commenced in a court of competent
592 jurisdiction. A lien that is continued beyond the 1-year period
593 ~~The continuation of the lien effected by the commencement of an~~
594 ~~the action is shall not enforceable be good~~ against creditors or
595 subsequent purchasers for a valuable consideration and without
596 notice, unless a notice of lis pendens is recorded.

597 (2) An owner or the owner's ~~agent or~~ attorney may elect to
598 shorten the time prescribed in subsection (1) within which to
599 commence an action to enforce any claim of lien or claim against
600 a bond or other security under s. 713.23 or s. 713.24 by
601 recording in the clerk's office a notice in substantially the
602 following form:

603 NOTICE OF CONTEST OF LIEN

604 To: ...(Name and address of lienor)...

605 You are notified that the undersigned contests the claim of lien
606 filed by you on, ...(year)..., and recorded in Book
607, Page, of the public records of County, Florida,
608 and that the time within which you may file suit to enforce your
609 lien is limited to 60 days from the date of service of this

25-00695A-12 20121202__

610 notice. This day of, ...(year)....

611 Signed: ...(Owner or Attorney)...

612
613 The lien of any lienor upon whom such notice is served and
614 who fails to institute a suit to enforce his or her lien within
615 60 days after service of such notice shall be extinguished
616 automatically. The owner or the owner's attorney clerk shall
617 serve mail a copy of the notice of contest to the lien claimant
618 at the address shown in the claim of lien or in the most recent
619 amendment thereto and shall certify to such service on the face
620 of the such notice and record the notice. ~~Service shall be~~
621 ~~deemed complete upon mailing.~~

622 Section 6. Paragraphs (c), (e), and (f) of subsection (1)
623 and subsections (2) and (4) of section 713.23, Florida Statutes,
624 are amended to read:

625 713.23 Payment bond.—

626 (1)

627 (c) ~~Either~~ Before beginning or within 45 days after
628 beginning to furnish labor or, materials, ~~or supplies~~, a lienor
629 who is not in privity with the contractor, except a laborer,
630 shall serve the contractor with notice in writing that the
631 lienor will look to the contractor's bond for protection on the
632 work. If a notice of commencement is not recorded, or a
633 reference to the bond is not given in the notice of
634 commencement, and ~~in either case~~ if the lienor not in privity
635 with the contractor is not otherwise notified in writing of the
636 existence of the bond, the lienor has not in privity with the
637 ~~contractor shall have~~ 45 days after from the date the lienor is
638 notified of the existence of the bond within which to serve the

25-00695A-12 20121202__
 639 notice. The notice may be in substantially the following form
 640 and may be combined with a notice to owner given under s. 713.06
 641 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO
 642 CONTRACTOR":

643
 644 NOTICE TO CONTRACTOR
 645

646 To ... (name and address of contractor)...

647
 648 The undersigned hereby informs ~~notifies~~ you that he or she has
 649 furnished or is furnishing services or materials as follows:
 650 ...(General description of services or materials)... for the
 651 improvement of the real property identified as ...(property
 652 description)... ~~owned by ... (owner's name and address)...~~ under
 653 an order given by ~~and that the undersigned will~~
 654 ~~look to the contractor's bond for protection on the work.~~

655
 656 ... (name of lienor)...
 657 ...(Signature of lienor or lienor's representative signature and
 658 address)...
 659 ...(date)...
 660 ...(lienor's address)...

661
 662 (e) ~~An~~ An ~~Ne~~ action for the labor or materials ~~or supplies~~ may
 663 not be instituted or prosecuted against the contractor or surety
 664 unless the notice to contractor and the notice of nonpayment
 665 ~~both notices~~ have been given, if required by this section. ~~An~~ Ne
 666 action may not ~~shall~~ be instituted or prosecuted against the
 667 contractor or against the surety on the bond under this section

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 668 after 1 year from the performance of the labor or completion of
 669 delivery of the materials ~~and supplies~~. The time period for
 670 bringing an action against the contractor or surety on the bond
 671 shall be measured from the last day of furnishing labor,
 672 services, or materials by the lienor. The time period may ~~and~~
 673 ~~shall~~ not be measured by other standards, such as the issuance
 674 of a certificate of occupancy or the issuance of a certificate
 675 of substantial completion. A contractor ~~or the contractor's~~
 676 ~~agent or attorney~~ may elect to shorten the ~~prescribed~~ time
 677 within which an action to enforce any claim against a payment
 678 bond ~~provided~~ under this section or s. 713.245 must ~~may~~ be
 679 commenced at any time after a notice of nonpayment, if required,
 680 has been served for the claim by recording in the clerk's office
 681 a notice in substantially the following form:

682 NOTICE OF CONTEST OF CLAIM
 683 AGAINST PAYMENT BOND

684 To: ... (Name and address of lienor)...

685 You are notified that the undersigned contests your notice
 686 of nonpayment, dated ..., ..., and served on the undersigned
 687 on ..., ..., and that the time within which you may file suit
 688 to enforce your claim is limited to 60 days from the date of
 689 service of this notice.

690 DATED on ..., ..

691
 692 Signed: ... (Contractor or Attorney)...

693
 694
 695 The claim of any lienor upon whom the notice is served and who
 696 fails to institute a suit to enforce his or her claim against

25-00695A-12 20121202__
 697 the payment bond within 60 days after service of the notice
 698 shall be extinguished automatically. The contractor ~~clerk~~ shall
 699 serve mail a copy of the notice of contest to the lienor at the
 700 address shown in the notice of nonpayment or in the most recent
 701 amendment thereto and shall certify to such service on the face
 702 of the notice and record the notice. ~~Service is complete upon~~
 703 ~~mailing.~~

(f) Any lienor has a direct right of action on the bond
 704 against the surety. A provision of a payment bond which further
 705 restricts ~~must not contain any provisions restricting the~~
 706 classes of lienors persons ~~protected by the payment bond thereby~~
 707 or the venue of any proceeding relating to the payment bond or
 708 which limits the effective duration of the payment bond, is
 709 unenforceable. The surety is not entitled to the defense of pro
 710 tanto discharge as against any lienor because of changes or
 711 modifications in the contract to which the surety is not a
 712 party; however, ~~but~~ the liability of the surety may not be
 713 increased beyond the penal sum of the bond. A lienor may not
 714 waive in advance his or her right to bring an action under the
 715 bond against the surety.

(2) The bond shall secure every lien under the direct
 716 contract accruing subsequent to its execution and delivery,
 717 except that of the contractor. Every claim of lien, except that
 718 of the contractor, filed subsequent to execution and delivery of
 719 the bond shall be transferred to it with the same effect as
 720 liens transferred under s. 713.24. Record notice of the transfer
 721 shall be effected by the contractor, or any person having an
 722 interest in the property against which the claim of lien has
 723 been asserted, by recording in the clerk's office a notice, with
 724 been asserted, by recording in the clerk's office a notice, with
 725

25-00695A-12 20121202__
 726 a copy of the bond attached, in substantially the following
 727 form:

NOTICE OF BOND

728
 729
 730 To ... (Name and Address of Lienor) ...
 731

732 You are notified that the claim of lien filed by you on,
 733, and recorded in Official Records Book at page of
 734 the public records of County, Florida, is secured by a
 735 bond, a copy being attached.

736
 737 Signed: ... (Name of person recording notice) ...
 738

739 The notice shall be verified. The person recording the notice of
 740 bond ~~clerk~~ shall serve mail a copy of the notice along with a
 741 copy of the bond on ~~to~~ the lienor at the address shown in the
 742 claim of lien, or the most recent amendment to it; shall certify
 743 to the service on the face of the notice; and shall record the
 744 notice. ~~The clerk shall receive the same fee as prescribed in s.~~
 745 ~~713.24(1) for certifying to a transfer of lien.~~

746 (4) Section 713.24(3) applies ~~The provisions of s.~~
 747 ~~713.24(3) shall apply~~ to bonds under this section. However, this
 748 section prevails in the event of a conflict with s. 713.24(3).
 749

Section 7. This act shall take effect October 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Construction Liens and Bonds

Bill Number SB 1202
(if applicable)

Name Bruce Kershner

Amendment Barcode _____
(if applicable)

Job Title _____

Address 231 West Bay Avenue

Phone 407 830 1882

Street

Longwood

City

FL

State

32750

Zip

E-mail BKershner@att.net

Speaking: For Against Information

Representing NACM Improved Construction Practices Committee

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)

2/9/12
Meeting Date

Topic Liens & Bonds

Bill Number 1202
(if applicable)

Name Deborah Lawson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 4125 Pecan Branch

Phone 850-570-0033

Street
Tallahassee FL 32309
City State Zip

E-mail deborahlawson@aol.com

Speaking: For Against Information

Representing NACM-Improved Construction Practices Comm.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 534

INTRODUCER: Senator Sobel

SUBJECT: Persons Excused from Jury Service

DATE: February 8, 2011

REVISED: _____

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

I. Summary:

This bill provides that any mother who is breastfeeding a child under 2 years of age must be excused from jury service upon her request. This bill also adds practicing psychologists to the list of persons a presiding judge is authorized to excuse from jury service upon his or her discretion. These changes would be an expansion of the current list of reasons a person may be excused from serving on a jury.

This bill substantially amends section 40.013, Florida Statutes.

II. Present Situation:

Background on Jury Selection

To be selected for a jury pool in Florida, a person must be chosen at random from a list of names provided quarterly to the clerk of court by the Department of Highway Safety and Motor Vehicles.¹ All persons on this jury list are required to be: United States citizens, legal Florida residents, at least 18 years of age, have a driver's license or identification card issued by the department, and reside in the county.² The Florida Statutes set out two processes for developing a jury venire, which is the group of persons who may be summoned to come to court. The clerk, under the supervision of the judge, may randomly select from the list a number of people

¹ Section 40.011, F.S.

² Section 40.01, F.S. Also, a resident who is at least 18 years of age, a United States citizen, and a legal resident of Florida may indicate a desire to serve as a juror, even if his or her name does not appear on the department list, by executing an affidavit at the office of the clerk. Section 40.011, F.S.

necessary for a given session.³ Alternatively, the court may request authority of the Florida Supreme Court to operate a special selection process using a mechanical, electronic, or electrical device.⁴ Both methods envision random selection from the list of eligible people. The court has procedures in place to ensure that once a potential juror is selected he or she is given proper notice of the summons to ensure compliance, or the person may face penalties imposed by the court.⁵ Once these people are summoned to attend court as potential jurors, they may be put into the jury pool from which the jury in any given case will be chosen.⁶

Persons Disqualified or Excused from Jury Service

There are two opportunities for a person who has been summoned for jury service to be excused. First, when a person receives a summons for jury service, he or she has the initial opportunity to provide an excuse from a list of acceptable excuses for why he or she cannot serve. The person will send this notification back to the clerk's office. A potential juror may also raise one of the statutory excuses once the person has reported for jury service so that he or she may be excused from participating any further. The Florida Statutes specify persons who are disqualified from jury service, persons whom a judge may excuse from jury service, and persons who must be excused from jury service upon request. Persons who are disqualified include:

- A person who is under prosecution for a crime, or a felon, unless the person's civil rights have been restored.
- The Governor and Lieutenant Governor, Cabinet officers, clerks of court, and judges.
- Full-time federal, state, or local law enforcement officers and investigative personnel of law enforcement agencies.
- A person interested in any issue to be tried in a case on which the person would serve as a juror.
- A person who would be serving as a juror within one year of the last day of previous jury service.

Persons who may be excused include:

- A practicing attorney, a practicing physician, or a person who is physically infirm.
- Any person upon a showing of hardship, extreme inconvenience, or public necessity.

Persons who must be excused upon request include:

- An expectant mother or parent who is not employed full time and who has custody of a child under 6 years of age.
- A person 70 years of age or older.

³ Section 40.221, F.S.

⁴ Section 40.225, F.S.

⁵ Section 40.23, F.S.

⁶ Section 40.231, F.S.

- A person who is responsible for the care of a person who, because of mental illness, mental retardation, senility, or other physical or mental incapacity, is incapable of caring for himself or herself.⁷

Florida's Breastfeeding Law

The Legislature has articulated that breastfeeding is a priority for the health of children. The Florida Statutes provide that “[t]he breastfeeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.”⁸ To achieve this end, the Legislature has specified that “[a] mother may breastfeed her baby in any location, public or private, where the mother is authorized to be.”⁹

Breastfeeding and Jury Duty

On January 20, 2011, Surgeon General Regina Benjamin released *The Surgeon General's Call to Action to Support Breastfeeding*, which stated that “the time has come to set forth the important roles and responsibilities of clinicians, employers, communities, researchers, and government leaders and to urge us all to take on a commitment to enable mothers to meet their personal goals for breastfeeding.”¹⁰ Currently, twelve states have laws or court rules that specifically allow a breastfeeding mother to either postpone or be excused from jury service.¹¹

Florida, however, does not allow a mother to be excused from jury duty solely because she is breastfeeding her child. The current law does allow for a mother who is not employed full time and is caring for a child under the age of 6 to be excused.^{12, 13} Therefore, a breastfeeding mother who is not employed full time may be excused under the current statute because her baby is under the age of 6, but not for the fact she is breastfeeding. Additionally, under s. 40.013(6), F.S., a breastfeeding mother could be excused upon a showing of hardship, extreme inconvenience, or public necessity.

Occupational Excuses from Jury Duty

Florida is one of many states that currently list occupations that authorize a person to be excused from jury duty.¹⁴ A judge may excuse a person from jury duty in this state if the juror is a full-time law enforcement officer, an attorney, or a physician.¹⁵

⁷ Section 40.013, F.S.

⁸ Section 383.015, F.S.

⁹ Section 383.015(1), F.S.

¹⁰ U.S. Department of Health and Human Services. *The Surgeon General's Call to Action to Support Breastfeeding*, pg v. Washington, DC: U.S. Department of Health and Human Services, Office of the Surgeon General; 2011. Available at <http://surgeongeneral.gov/topics/breastfeeding/calltoactiontosupportbreastfeeding.pdf> (last visited February 6, 2012).

¹¹ These states include: California, Idaho, Illinois, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon, and Virginia. Additionally, Puerto Rico has similar provisions. National Conference of State Legislatures, *Breastfeeding Laws* (updated May 2011), <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx> (last visited January 31, 2012).

¹² Section 40.013(4), F.S.

¹³ Florida distinguishes, *sub silentio*, between mothers who do not work full time and those mothers who do, relieving the former of the additional burden of jury service but not the latter.

¹⁴ 47 AM. JUR. 2D *Jury* s. 159 (2011).

¹⁵ Section 40.013, F.S.

Psychologists in Florida

The Florida Statutes define the “practice of psychology” as “the observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health.”¹⁶ To become a licensed psychologist in Florida, a person must have a doctoral degree in psychology or the equivalent, obtain at least 2 years or 4,000 hours of experience, pass the psychological licensure exam, and be licensed by the Department of Health.¹⁷

III. Effect of Proposed Changes:

This bill provides that any mother breastfeeding a child under 2 years of age must be excused from jury service upon request. Also, this bill authorizes a presiding judge to excuse a practicing psychologist from jury service. This bill adds an authorized excuse and an additional occupation to the current statutory list of people who may be excused from jury service.

This bill takes effect on 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.

¹⁶ Section 490.003(4), F.S.

¹⁷ Section 490.005, F.S.

C. Government Sector Impact:

The Florida Association of Court Clerks (FACC) stated that the clerks will incur a onetime cost, which should not be significant; to reprogram and reprint the juror summons to include the breastfeeding and psychologist excuses.¹⁸ The FACC, therefore, suggests that the Legislature consider changing the effective date of the bill to October 1, 2012, to allow time for the new summons to be prepared and to use up any “old” summons that clerks may have on hand. An October effective date will also ensure that those who will be eligible to avail themselves of the new excuses will receive a revised summons, not an old summons.

However, the State Courts Administrator advised that this bill will have not fiscal impact on the judiciary.¹⁹

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.

¹⁸ E-mail from Randy Long, Florida Association of Court Clerks, to Dustin Irwin, Legislative Analyst, Senate Committee on Judiciary (January 31, 2012) (on file with the Senate Committee on Judiciary).

¹⁹ Office of the State Courts Administrator, *2012 Judicial Impact Statement SB 534* (October 26, 2011) (on file with the Senate Committee on Judiciary).

By Senator Sobel

31-00523-12

2012534__

1 A bill to be entitled
 2 An act relating to persons excused from jury service;
 3 amending s. 40.013, F.S.; expanding parental
 4 eligibility to be excused from jury service;
 5 authorizing a presiding judge to excuse a practicing
 6 psychologist from jury service; providing an effective
 7 date.

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

10

11 Section 1. Subsections (4) and (5) of section 40.013,
 12 Florida Statutes, are amended to read:

13 40.013 Persons disqualified or excused from jury service.-

14 (4) Any expectant mother, any mother who is breastfeeding a
 15 child under 2 years of age, and any parent who is not employed
 16 full time and who has custody of a child under 6 years of age,
 17 upon request, shall be excused from jury service.

18 (5) A presiding judge may, ~~in his or her discretion~~, excuse
 19 a practicing attorney, a practicing physician, a practicing
 20 psychologist, or a person who is physically infirm from jury
 21 service, except that a ~~no~~ person may not ~~shall~~ be excused from
 22 service on a civil trial jury solely on the basis that the
 23 person is deaf or hearing impaired, if that person wishes to
 24 serve, unless the presiding judge makes a finding that
 25 consideration of the evidence to be presented requires auditory
 26 discrimination or that the timely progression of the trial will
 27 be considerably affected thereby. However, ~~nothing in~~ this
 28 subsection does not ~~shall~~ affect a litigant's right to exercise
 29 a peremptory challenge.

Page 1 of 2

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

31-00523-12

2012534__

30 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
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 720

INTRODUCER: Senator Garcia

SUBJECT: Miami-Dade County Home Rule Charter

DATE: February 8, 2012

REVISED: _____

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

I. Summary:

Senate Joint Resolution (SJR) 720 proposes an amendment to the Florida Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by a special law approved by a vote of the electors in that county, and provides requirements for a bill proposing such a special law. This joint resolution also authorizes the Miami-Dade charter to provide for fixed term limits of Miami-Dade County Commissioners.

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

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

II. Present Situation:

Counties

Article VIII, section 1 of the Florida Constitution requires the state to be divided into political subdivisions known as counties which shall provide state services at the local level. There are two types of counties that are recognized under the Florida Constitution: 1) counties that are not operating under a county charter; and 2) counties that are operating under a county charter.¹

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

Non-Charter Counties

Non-charter county governments only have such powers of self-government as is provided by general or special law.² In addition, non-charter counties may enact ordinances not inconsistent with general or special law. A county ordinance in a non-charter county that is in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.

Charter Counties

Charter counties have greater powers of self-government than non-charter counties. Counties operating under a charter have all powers of self-government not inconsistent with general law or with special law approved by the vote of the electorate.³ Although a non-charter county can be established through general law, a charter county can only be adopted, amended or related through a special election by the vote of the electors in that county. In a charter county, the charter must provide which prevails in the event of a conflict between county and municipal ordinances. Special acts that do not require referendum approval do not apply to charter counties.

Miami-Dade Home Rule Charter⁴

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

Article VIII, section 6(e), of the Florida Constitution, states that the provisions of the Metropolitan Dade (or Miami-Dade) County Home Rule Charter adopted by the electors of Miami-Dade County pursuant to Article VIII, section 11 of the Constitution of 1885 are valid and any subsequent amendments to the charter, authorized by Article VIII, section 11 of the Constitution of 1885 are authorized.⁵

Unique Powers

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

² FLA. CONST. art. VIII, s. 1(f).

³ FLA. CONST. art. VIII, s. 1(g).

⁴ Section 125.011(1), F.S., defines the term “county” to mean:

any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

The constitutional sections that are contained in s. 125.011(1), F.S., refer to Key West/Monroe County, Miami-Dade County and Hillsborough County, respectively.

⁵ FLA. CONST. art. VIII, s. 6(e).

- Merging, consolidating, abolishing and changing the boundaries of municipal, county or district governments whose jurisdictions lie wholly within Miami-Dade County;
- Providing a method for establishing new municipal corporations, special taxing units, and other governmental units in Miami-Dade County;
- Providing an exclusive method for municipal corporations to make, amend, or repeal their own charters, which, once adopted, cannot be changed or repealed by the Legislature;
- Abolishing the offices of sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court and providing for the consolidation and transfer of their functions; and
- Changing the name of the county.

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

Special Provisions

Miami-Dade County Home Rule Charter (“Charter”) was officially adopted on May 21, 1957. The Charter authorizes the Board of County Commission to create new municipalities; change municipal boundaries; and to establish, merge, and abolish special purpose districts. The Charter also abolishes the constitutional office of the Sheriff and authorizes the Board of County Commission to “[e]xercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the state.”⁶

Court Interpretations

Florida courts have consistently invalidated the applicability of special acts passed by the Legislature that attempt to supersede the home rule powers of Miami-Dade County. The Florida Supreme Court has held that the constitutional provisions granting home rule authority to Miami-Dade County transferred to the county “the powers formerly vested in the state legislature with respect to the affairs, property and government of Dade County and all the municipalities within its territorial limits.”⁷

In the case of *Chase v. Cowart*,⁸ the Florida Supreme Court was asked to determine whether the Miami-Dade County Budget Commission had been abolished by the electors of Miami-Dade County through the enactment of its home rule charter. The Commission was originally established by the Florida Legislature with authority over the fiscal affairs of county boards and

⁶ Article 1, s. 1.01(21), *Miami-Dade County Home Rule Charter*.

⁷ *State v. Dade County*, 142 So. 2d 79, 85 (Fla. 1961) (citing *Chase v. Cowart*, 102 So. 2d 147 (Fla. 1958)).

⁸ *Chase*, 102 So. 2d 147.

county officers of Miami-Dade County and whose jurisdiction fell entirely within Miami-Dade County.

In deciding the issue, the Court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Article VIII, of the Florida Constitution of 1885, as amended, which preserve to the Legislature the authority to enact general laws that apply to Miami-Dade County and any one or more counties. The Court also analyzed subsection (1)(c), s. 11, Article VIII, of the Florida Constitution of 1885, which provides an express grant of power authorizing the voters of Miami-Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly within Miami-Dade County, whether created by the Constitution, the Legislature or otherwise.

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

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

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

In *City of Sweetwater v. Dade County*,¹⁰ the Third District Court of Appeal held that general law provisions governing the annexation of land into municipalities did not apply within Miami-Dade County since municipal boundary change is “one of the areas of autonomy conferred on Dade County” by its Home Rule Charter.¹¹ In reaching this holding, the appellate court upheld the trial court’s judgment ruling, which relied on the autonomy granted to Miami-Dade County under Article VII, section 11(1), of the Florida Constitution of 1885, as amended:

Subsections 1(a) through (i) of the Home Rule Charter Amendment constitute those organic areas of autonomy and authority in local affairs conferred upon Dade County by the Florida Constitution and may not be diminished and curtailed by general laws of the State enacted after 1956.¹²

⁹ *Id.* at 152-53.

¹⁰ *City of Sweetwater v. Dade County*, 343 So. 2d 953 (Fla. 3rd DCA 1977).

¹¹ *Id.* at 954.

¹² *Id.* (citations omitted).

Based on this information the Third District Court of Appeal determined “that the method provided by the Home Rule Charter . . . is effective and exclusive, notwithstanding the existence from time to time of a general state law which makes provision for some other method.”¹³

III. Effect of Proposed Changes:

This joint resolution will allow the Miami-Dade Home Rule Charter to be amended or revised by special law approved by the electors of Miami-Dade County, notwithstanding any provision of Article VII, section 11, of the Florida Constitution of 1885. If such amendments or revisions are approved by the electors of Miami-Dade County, they shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation.

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

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

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the electors at the 2012 General Election will take effect on January 8, 2013.¹⁴

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

¹³ *Id.*

¹⁴ FLA. CONST. art. XI, s. 5(e).

Section 5(d), Article XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.¹⁵ Costs for advertising vary depending upon the length of the amendment. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

VI. Technical Deficiencies:

None.

¹⁵ FLA. CONST. art. XI, s. 5(d).

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 Garcia

40-00513-12

2012720__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VIII of the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors; providing requirements for a bill proposing such a special law; authorizing the Miami-Dade County charter to provide for fixed term limits of commissioners.

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

That the following amendment to Section 6 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 6. Schedule to Article VIII.—

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

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

Page 1 of 4

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

40-00513-12

2012720__

of county officers; the performance of municipal functions by county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

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

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

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

Page 2 of 4

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

40-00513-12 2012720__
 59 amended or revised by special law approved by the electors of
 60 Miami-Dade County and, if approved, shall be deemed an amendment
 61 or revision of the charter by the electors of Miami-Dade County.
 62 A bill proposing such a special law must be approved at a
 63 meeting of the local legislative delegation and filed by a
 64 member of that delegation. The charter may provide for fixed
 65 term limits of Miami-Dade County Commissioners.

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

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

79 BE IT FURTHER RESOLVED that the following statement be
 80 placed on the ballot:

81 CONSTITUTIONAL AMENDMENT

82 ARTICLE VIII, SECTION 6

83 AUTHORIZING AMENDMENTS TO MIAMI-DADE COUNTY HOME RULE
 84 CHARTER BY SPECIAL LAW APPROVED BY REFERENDUM.—Authorizes
 85 amendments or revisions to the Miami-Dade County Home Rule
 86 Charter by a special law when the law is approved by a vote of
 87 the electors of Miami-Dade County. A bill proposing such a

40-00513-12 2012720__
 88 special law must be approved at a meeting of the local
 89 legislative delegation and filed by a member of that delegation.
 90 It also conforms references in the State Constitution to reflect
 91 the county's current name and states that the charter may
 92 provide for fixed term limits of Miami-Dade County
 93 Commissioners.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/2012

Meeting Date

Topic _____

Bill Number 720
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 410

INTRODUCER: Senator Bennett

SUBJECT: Electronic Filing of Court and Other Legal Documents

DATE: January 30, 2012

REVISED: _____

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

I. Summary:

This bill requires that litigants pay a specified surcharge for filing paper versions of court and other legal documents, instead of electronically filing the documents. A surcharge of 3.5 percent of the cost of filing the document electronically will apply to litigants in the courts of this state, the Division of Administrative Hearings, or the Office of the Judges Compensation Claims. Litigants filing paper documents are to pay the surcharge in addition to any other costs incurred if the litigant files a paper document.

The bill provides an exception for indigent persons, as determined by s. 27.52, F.S. This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Electronic Filing of Court Documents

Notwithstanding a few pilot programs,¹ clerks of court in Florida, generally, did not accept electronic filings of court documents² until 2009. In 2009, the Legislature passed and the

¹ The Manatee County Clerk of Court, for example, piloted one of the first electronic filing processes in the state.

² Sections 27.341(1)(b) and 27.5112(1)(b), F.S., define the term "court documents" as including, but not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

Governor signed into law Senate Bill 1718,³ to require each clerk of the court to implement a statewide, uniform electronic filing process for court documents.⁴

To implement the requirements of Florida's electronic filing law, the Florida Supreme Court promulgated statewide standards on July 1, 2009.⁵ The standards established that electronic filing would be implemented through "a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts."⁶ All electronic filing systems were required to be compatible with the Florida Courts E-Portal developed by the Florida Courts Technology Commission.⁷ Designed to the Court's specifications,⁸ the electronic filing system, is called the Florida Courts E-Filing Portal, and can be found at www.myflcourtagency.com.

Florida's Statewide E-Filing Portal

The statewide electronic filing (e-filing) portal became available in January 2011, providing individual Florida bar members⁹ with "a uniform, public, Internet-based gateway or access point for the transmission of electronic court records to and from all Florida courts."¹⁰ Accessibility to the portal continues to be phased in.¹¹ As of January 2012; attorneys can e-file in 40 counties,¹² for cases in at least five of the 10 trial court divisions.¹³ Use of e-filing continues to grow incrementally. As of June 30, 2011, 6,822 filings had been submitted through the portal.¹⁴

An inter-local agreement between the Supreme Court of Florida and the clerks of court established the Florida Courts E-Filing Authority.¹⁵ The Florida E-Filing Authority, comprised of eight circuit court clerks and the Clerk of the Supreme Court, provides governance for the e-filing portal.¹⁶ The Authority is contracted with the Florida Association of Court Clerks and

³Chapter 2009-61, s. 16, Laws of Fla. The Legislature's expressed intent for requiring implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."

⁴*Id.* Note, that the federal court system already uses its own electronic filing system called PACER (Public Access to Court Electronic Records). PACER, *PACER Home*, <http://www.pacer.gov/> (last visited Jan. 25, 2012).

⁵*In Re: Statewide Standards for Electronic Access to the Courts*, Fla. Admin. Order No. AOSC09-30 (Fla. Jul 1, 2009).

⁶*Id.* at 3.

⁷*Id.*

⁸The Court specified that electronic court records submitted to the portal must be "capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance"; such records "shall constitute the official record and are equivalent to court records filed in paper." The Supreme Court of Florida, *Standards for Electronic Access to the Courts*, Version 6.0 (Oct. 2011), at s. 1.0.

⁹Non-attorney, self-represented litigants may use public computers available at clerks of court offices, and they must be provided the means to file documents electronically. *Id.* at s. 3.1.21.

¹⁰Florida Office of the State Courts Administrator, *2010-2011 Annual Report*, at 12.

¹¹Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011.

¹²Florida Courts e-Filing Portal, Registration Notice, available at <https://www.myflcourtagency.com/RegistrationNotice.htm> (last visited Jan. 25, 2012).

¹³Office of the State Courts Administrator, *Electronic Initiatives as of November 8, 2011*, available at http://www.flcourts.org/gen_public/technology/bin/Electronic_Initiatives_Update_Chart-%2011-08-11.pdf (last visited Jan. 26, 2012).

¹⁴Florida Office of the State Courts Administrator, *supra* note 8.

¹⁵The Florida Courts E-Filing Authority is a public agency created by interlocal agreement, as set forth in ch. 163, F.S.

¹⁶Florida E-Filing Authority, *E-Filing Authority Home*, http://www.flclerks.com/eFiling_authority.html (last visited Jan. 26, 2012).

Comptrollers (FACC) to make the business decisions related to the development and operation of the Florida e-filing court records portal.¹⁷ The FACC designs, develops, implements, operates, upgrades, supports, and maintains the portal for the benefit of the E-Filing, in adherence to the standards created and approved by the Florida Courts Technology Commission.¹⁸

Noting positive feedback from lawyers and courts of clerk so far, the Florida Office of State Courts Administrator expects continued benefits realized from the portal's "efficiency, its time-savings, and its cost-effectiveness."¹⁹ Planned future enhancements to the portal include acceptance of e-filings for Florida's appellate courts, and an e-filing program for self-represented litigants.²⁰

Other Electronic Filing Efforts

Distinct from the statewide portal, there have been other electronic filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Supreme Court in 2005 to use electronic filing in all cases.²¹ Electronic filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.²² On the appellate level, the First District Court of Appeal (First DCA) began implementing an electronic filing program in 2009 at the direction of the Legislature.²³ When the program first began, attorneys had the option of filing documents electronically or in paper. However, effective September 1, 2010, all attorneys were required and non-attorneys were encouraged to file all pleadings electronically.²⁴ The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;²⁵ attorneys in the appellate division currently file electronically in accordance with the court's requirements.

Requirements for Officers of the Court to use E-filing Portal

As of July 1, 2011, state attorneys and public defenders are required to electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.²⁶ These officers of the court must electronically file through the statewide Florida Courts E-Portal, or if the case type for that county has not yet been approved for the statewide portal, they can electronically file using other means.²⁷ The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President

¹⁷ Florida Office of the State Courts Administrator, *supra* note 8.

¹⁸ Florida Office of the State Courts Administrator, *Agreement for the Design, Development, Implementation, Operation, Upgrading, Support, and Maintenance of Statewide E-filing Court Records Portal* (2010), available at http://www.flclerks.com/e-Filing_Authority/Resources/EFA_Documents/development_agreement_FACC_6-22.pdf (last visited Jan. 26, 2012).

¹⁹ Florida Office of the State Courts Administrator, *supra* note 8.

²⁰ *Id.* "[T]he FACC is working on a specialized e-filing program that, much like tax preparation software packages, will walk a pro se party through a series of questions and create the pleading for him/her."

²¹ Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, <http://www.manateeclerk.com/Services/EFiling.aspx> (last visited Jan. 26, 2012).

²² *Id.*

²³ Chapter 2009-61, s. 17, Laws of Fla.

²⁴ *In Re: Electronic Filing of Pleadings in the First District Court of Appeal*, AO10-3 (Fla. 1st DCA 2010).

²⁵ Florida State Courts, *Florida's District Courts*, <http://www.flcourts.org/courts/dca/dca.shtml> (last visited Jan. 26, 2011).

²⁶ Sections 27.341(1)(a) and 27.5112(1)(a), F.S.

²⁷ *Id.*

of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office has made to implement an electronic filing system.²⁸ For any office of the state attorney that has not fully implemented an electronic filing system by that date, the report must also include a description of the additional activities that are needed to complete the system and the additional timeframe anticipated.²⁹

Judicial Rules related to E-Filing

As the court system adjusted to electronic filing in the past few years, the Supreme Court of Florida adopted rules intended to protect the rights of litigants. For example, court records that are electronically filed must be formatted in a manner that complies with all state and federal laws requiring that electronic judicial records be accessible to persons with disabilities.³⁰

On October 1, 2011, Rule of Judicial Administration 2.425, went into effect, minimizing public access to private, personal information about litigants. Before filing documents with a court, Rule 2.425 requires truncation or redaction of numerous types of information. With few stated exceptions,³¹ social security numbers and bank account numbers should not be included at all; driver's license numbers, passport numbers, or patient numbers must be truncated to only the last four digits; and only a minor's birth year should be used³² unless the full date of birth is necessary to establish the court's jurisdiction in the matter.³³

Availability of e-filing for electronically receiving court documents from the clerk of the court does not absolve clerks of court from requirements to provide defendants with paper copies of the record. Even if a clerk of court provides a defendant in a criminal case with a copy of the court reporter's CD-ROM, the defendant is still entitled to receive paper transcripts of the record, as well as paper copies of the record.³⁴ Clerks of the Court must still prepare paper copies of the transcripts for the parties, because the clerk must prepare copies of the "original transcripts,"³⁵ and the default format of a transcript is the traditional bound paper format.³⁶

Fees for E-Filing

Filing fees for judicial proceedings and service charges for performing court-related functions supply all funding for the clerks of the circuit and county courts.³⁷ In 1998, Florida voters approved Amendment 7 to the State Constitution, which was placed on the election ballot by the Florida Constitution Revision Commission, and titled Florida Local Option for Selection of Judges and Funding of State Courts. Subsequently, the Florida Constitution has required that "salaries, costs, and expenses of the state courts system" be funded from "adequate and

²⁸ Sections 27.341(3) and 27.5112(3), F.S.

²⁹ *Id.*

³⁰ Fla. R. Jud. Admin. 2.526.

³¹ *E.g.* Fla. R. Jud. Admin. 2.425(b)(10) exempts from truncation or redaction "information that is relevant and material to an issue before the court."

³² Fla. R. Jud. Admin. 2.425(a).

³³ Fla. R. Jud. Admin. 2.425(b).

³⁴ *Office of Atty. Gen. v. Shore*, 41 So. 3d 966, 970-71 (Fla. 2d DCA 2010).

³⁵ Fla. R. App. P. 9.140(f)(2)(F)

³⁶ Fla. R. Jud. Admin. 2.535(f)(1).

³⁷ FLA. CONST. art. V, s. 14. However, the fees may be supplemented from state revenues appropriated by general law.

appropriate” fees and charges, as provided by general law.³⁸ The Office of the State Courts Administrator is tasked with preparing and disseminating a manual of court-related filing fees, service charges, costs, and fines imposed pursuant to state law.³⁹

To file cases with Florida’s courts, electronically, through the e-filing portal, the regular filing fees established by Florida law are required to be paid, as well as the convenience fees established to offset the use of electronic funds transfer. The convenience fee applies to litigants using the portal regardless of payment type.⁴⁰ The portal accepts MasterCard, Discover, and American Express cards, with an associated fee of 3-percent of the cost of filing, or ACH transactions for a \$3.00 flat fee.⁴¹

III. Effect of Proposed Changes:

This bill requires payment of a specified surcharge by litigants who are required to electronically file a court or other legal document, but who instead file paper versions of these documents. A surcharge of 3.5 percent of the cost of filing the document electronically would apply to such litigants in the courts of this state, the Division of Administrative Hearings, or the Office of the Judges Compensation Claims. Litigants filing paper documents are to pay the surcharge in addition to any other costs incurred if the litigant files a paper document. More than offsetting the 3-percent convenience fee associated with electronic filing, the 3.5-percent charge set out in the bill, generally, provides litigants an incentive to use the electronic filing portal instead of making paper filings.

The bill provides that the 3.5-percent surcharge does not apply to a person who is indigent, as determined by s. 27.52, Florida Statutes.

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.

³⁸ *Id.* at s. 14(b).

³⁹ Section 28.42, F.S.

⁴⁰ Florida Association of Clerks and Comptrollers, Florida ePortal and eFiling Frequently Asked Questions, *available at* http://www.flclerks.com/e-Filing_Authority/eFiling_fa1.html (last visited Jan. 27, 2012).

⁴¹ *Id.*

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

The bill provides for a surcharge on paper filings in courts of this state equal to 3.5-percent of the cost of the filing.

B. Private Sector Impact:

The bill may have an impact on the private sector, because litigants who are required to electronically file, but who file paper documents in a court of this state, would incur the surcharge set out in this bill.

C. Government Sector Impact:

Committee staff does not have data specifying the number of legal documents that are currently filed in paper or electronic formats. Any additional source of funding to the state court system associated with the surcharge set out by the bill may diminish over time if litigants are thereby deterred from filing paper documents. However, generating revenues through this surcharge is not the only government fiscal impact likely to be realized by increased use of e-filing. In addition, the clerks of court and the judiciary may experience reduced costs and increased efficiency. Gains in efficiency likely include increased timeliness in the processing of cases and improved judicial case management.⁴² To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

This bill will not impose additional costs on state attorneys and public defenders as they are exempt from filing fees under s. 28.345, F.S.⁴³

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.

⁴² Section 28.22205, F.S., specifically states that e-filing must give courts the information they need to decide cases more quickly and to improve judicial case management.

⁴³ Section 28.345, F.S., also provides an exemption from payment of all court related fees and charges to guardians ad litem, public guardians, judges, and state agencies.

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 Bennett

21-00435-12

2012410__

1 A bill to be entitled

2 An act relating to electronic filing of court and
3 other legal documents; requiring that a litigant in
4 the courts of this state, the Division of
5 Administrative Hearings, or the Office of the Judges
6 of Compensation Claims pay a specified surcharge in
7 addition to any other cost incurred for filing court
8 and other legal documents by means of paper documents
9 instead of electronically filing the documents;
10 providing an exception for a person who is indigent;
11 providing an effective date.
12

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

14
15 Section 1. Electronic filing of court and other legal
16 documents; surcharge for nonelectronic filing.—

17 (1) A litigant who is required to electronically file a
18 court or other legal document in a court of this state, in the
19 Division of Administrative Hearings, or in the Office of the
20 Judges of Compensation Claims shall pay a surcharge in addition
21 to any other cost incurred if the litigant files a paper
22 document instead of electronically filing the document. The
23 surcharge shall equal 3.5 percent of the cost of filing the
24 document electronically.

25 (2) This section does not apply to a litigant who is
26 indigent as determined by s. 27.52, Florida Statutes.

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

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 826

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Title Insurance Claims

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/CS
2.	Munroe	Cibula	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires title insurance companies to cover additional costs paid by the insured while a challenge to title is being cured. The additional coverage is only applied if the title insurer's failure to establish title directly impacts the costs paid by the insured. In the event of a complete loss of title, the bill requires insurers to pay full policy limits regardless of market value. Additionally, the bill requires insurers to issue supplemental policies to owners of real property whenever a new "loan title insurance policy" is issued. Finally, the bill requires all title searches to begin from the last title transaction at least 30 years before the issuance of a new title policy.

The bill creates sections 627.7832 and 627.7844, Florida Statutes.

This bill amends section 627.7845, Florida Statutes.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer² that, after performing a search of title, insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is lending money on a mortgage. Purchasers of real property and lenders use title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Regulation

In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage³ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁴

Pursuant to s. 627.782, F.S., the FSC is required to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every 3 years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.⁵ Title insurers may deviate from the prescribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁶ In Florida, title insurers may only transact title insurance and may not transact any other type of insurance.⁷

Challenges

There are no set timeframes in statute as to when disputes to a title of real property must be cured by a title insurance company. The insurance company's primary objective in a dispute is to

¹ Section 624.608, F.S. Title insurance is also "[i]nsurance of owners and secured parties as to the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code." Section 624.408(2), F.S.

² Section 627.7711(3), F.S.

³ Section 627.777, F.S.

⁴ Section 627.782, F.S.

⁵ *Id.*

⁶ Section 627.783, F.S.

⁷ Section 627.786, F.S.

validate the policy as issued. If a challenge to title is brought, the title insurance company may settle with the challenging parties, challenge the dispute in court, or tender partial or full policy limits for any damages occurred to the insured from the partial or total loss of title.⁸ Often disputes to title of real property can be settled between the parties involved without the involvement of the courts, thus cutting down on the time it takes for a challenge to title to be cured.

Loss of Title

When a complete loss of title occurs, the insurer will tender full policy limits if at the time of loss the market value of the real property is at or above the policy limits originally insured.⁹ Consequently, if at the time of loss the market value of the real property is below the value initially insured, the insurer will only pay the insured the market value of the real property and not the limits initially insured.

Searches

Florida law does not specify how far back a title search must go. Often new policies are issued based on the results of the previous title search performed. While s. 712.01(2), F.S. does not impose a timeframe it does define the “root of title” to mean “any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.” This distinction is important because of the curative effect of the Marketable Record Title Act on certain defective titles.

Under the Marketable Record Title Real Property Act,¹⁰ any person having the legal capacity to own land in Florida, who, alone or together with his or her predecessors in title, has been vested with any estate in land of record for 30 years or more, will have a marketable record title to such estate in such land, which will be free and clear of all claims, except the matters set forth by statute as exceptions to marketability.¹¹ The Florida Supreme Court has noted: “The chief purpose of the act is to [extinguish] stale claims and ancient defects against the title to real property, and, accordingly, limit the period of search.”¹² “[U]nder the Marketable Record Title Act, most defects or clouds on title beyond the 30 years are removed and the purchaser is made secure in his transaction.”¹³

III. Effect of Proposed Changes:

The bill requires title insurers to pay full policy limits within 90 days after a challenge to title is filed or cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include attorney fees, moving expenses, property taxes,

⁸ See Matthew C. Lucas, *Now or Then? The Time of Loss in Title Insurance*, 85 FLA. B.J. 10, 12 (Dec. 2011).

⁹ Interview with an attorney who specializes in title insurance issues.

¹⁰ Sections 712.01 – 712.11, F.S.

¹¹ Section 712.02, F.S.

¹² *Marshall v. Hollywood*, 236 So. 2d 114, 119 (Fla. 1970) (quoting Catsman, *The Marketable Record Title Act and Uniform Title Standards*, III Florida Real Property Practice (1965), s. 6.2).

¹³ *Id.*

architect fees, engineering fees, permitting fees, or mortgage interest paid up until the claim is cured. The bill states the additional coverage applies only if the failure to establish title directly impacts the costs paid by the insured. Additionally, the bill requires title insurers to pay full policy limits regardless of market value whenever a complete loss of title occurs. The bill requires insurers to issue supplemental policies to owners of real property whenever a new “loan title insurance policy” is issued and requires a waiver of the right to purchase supplemental title insurance to cover the amount of the new loan to be made in writing. Finally, the bill requires all title searches to begin from the “root of title” pursuant to s. 712.01(2), F.S., which means the search will begin from the last title transaction at least 30 years before the time for which marketability is determined.

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:

Title insurance companies would be subject to additional costs when trying to cure a challenge to title.

Owners of real property must decline in writing any new supplemental policies issue. The additional coverage required under the bill may also increase costs to the owner of real property when a new “loan title insurance policy is issued,” unless the owner waives in writing the right to purchase supplemental title insurance.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Banking and Insurance on January 26, 2012:

Section 1 – Creates s. 627.7832, F.S., which requires title insurers to cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include: attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees and or mortgage interest paid up until the claim is cured. The additional coverage only applied if the failure to establish title directly impacts the costs paid by the insured. In the event of complete loss of title, the insurer shall pay full policy limits regardless of market value.

Sections 2 - Creates s. 627.7844, F.S., which requires insurers to issue supplemental policies to owners of real property whenever a new “loan policy” is issued. Furthermore, owners of the real property may waive in writing the new loan coverage policies.

Section 3 – Amends 627.7845, F.S., which requires all title searches to begin from the “root of title” pursuant to s. 712.01(2), F.S.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Bennett

597-02428-12

2012826c1

1 A bill to be entitled
 2 An act relating to title insurance claims; creating s.
 3 627.7832, F.S.; providing that after a specified time,
 4 a title insurer must pay the claim or pay an
 5 additional percentage above the initial amount insured
 6 to reimburse the policyholder for certain expenses
 7 until the claim is cured; providing conditions for
 8 certain payments; providing an exception for
 9 additional policy limits; creating s. 627.7844, F.S.;
 10 providing conditions and amounts for the simultaneous
 11 issue of an owner's title insurance policy in
 12 additional to the loan title insurance policy;
 13 providing criteria for the supplemental coverage;
 14 establishing the premium for such coverage and
 15 providing for a waiver of coverage; amending s.
 16 627.7845, F.S.; specifying that a title insurer's
 17 determination of insurability must be based on the
 18 evaluation of a reasonable title search beginning with
 19 a root of title; providing an effective date.
 20

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

22
 23 Section 1. Section 627.7832, Florida Statutes, is created
 24 to read:

25 627.7832 Claims payment.-

26 (1) A title insurer has the right to cure each claim made.
 27 However, after 90 days without a cure the insurer must tender
 28 payment of full policy limits to the insured or pay up to an
 29 additional 25 percent above the initial amount insured to

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

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30 reimburse the insured for the payment of any attorney fees,
 31 moving expenses, property taxes, architect fees, engineering
 32 fees, permitting fees, or mortgage interest until the cure is
 33 finalized.

34 (2) The additional 25 percent applies only if the insurer's
 35 failure to establish title directly impacts the payments listed
 36 in subsection (1).

37 (3) If a complete loss of title occurs, full policy limits
 38 must be paid regardless of market values.
 39

40 This section does not apply to additional policy limits issued
 41 pursuant to s. 627.7844.

42 Section 2. Section 627.7844, Florida Statutes, is created
 43 to read:

44 627.7844 Supplemental coverage.-

45 (1) If the current owner of real property borrows money
 46 secured by an interest in such real property and a loan title
 47 insurance policy is issued at original title insurance rates
 48 established pursuant to s. 627.782, less any agreed rebates in
 49 connection therewith, the title agency, title insurer, or
 50 attorney-agent providing the loan title insurance policy must
 51 simultaneously issue an owner's title insurance policy in the
 52 amount of the loan title insurance policy, or such greater
 53 amount as may be requested by the property owner.

54 (2) (a) If the property owner provides a copy of one or more
 55 owner's title insurance policies currently insuring the owner's
 56 interest in the real property, the coverage of the new owner's
 57 policy to be issued shall be supplemental to the existing owners
 58 policy, and the policy limits of the new owner's policy must be

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59 fully available if the aggregate insured losses suffered by the
 60 insured exceed the amount insured collectively by the prior
 61 policy. Actual payment or recovery from the prior insurer is not
 62 a condition precedent for recovery under the new owner's policy.

63 (b) This supplemental coverage may be accomplished through
 64 an endorsement of the existing owner's policy or the issuance of
 65 a new owner's policy containing language establishing coverage
 66 as being supplemental to the prior policies.

67 (c) The new owner's and loan policies shall reflect policy
 68 exceptions and limitations based on the current state of title
 69 to the property, and may include exceptions that did not appear
 70 in the prior owner's policy.

71 (3) The premium for the simultaneous issuance of the new
 72 owner's policy must be the minimum simultaneous issue rate
 73 established pursuant to s. 627.782.

74 (4) The owner of the real property shall waive in writing
 75 the right to purchase any additional owner's coverage.

76 Section 3. Subsection (1) of section 627.7845, Florida
 77 Statutes, is amended to read:

78 627.7845 Determination of insurability required;
 79 preservation of evidence of title search and examination.-

80 (1) A title insurer may not issue a title insurance
 81 commitment, endorsement, or title insurance policy until the
 82 title insurer has caused to be made a determination of
 83 insurability based upon the evaluation of a reasonable title
 84 search beginning with a root of title, as defined in s.
 85 712.01(2) or a search of the records of a Uniform Commercial
 86 Code filing office, as applicable, has examined such other
 87 information as may be necessary, and has caused to be made a

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2012826c1

88 ~~determination of insurability of title or the existence,~~
 89 ~~attachments, perfection, and priority of a Uniform Commercial~~
 90 ~~Code security interest, including endorsement coverages, in~~
 91 ~~accordance with sound underwriting practices.~~

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

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/CS/SB 1196

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

SUBJECT: Residential Construction Warranties

DATE: February 13, 2012 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides that a purchaser of a new home or a homeowners' association does not have a cause of action for damages based on an implied warranty of fitness and merchantability or habitability, relating to an offsite improvement for a new home. Under the bill, an "offsite improvement" includes a street, driveway, road, sidewalk, drainage, utilities, or any other improvement or structure that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

This bill creates section 553.835, Florida Statutes, and an undesignated section of the Florida Statutes.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act,¹ is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state

¹ See ch. 553, part IV, F.S.

building code,” known as the Florida Building Code.² Section 553.72, F.S., defines the Florida Building Code as a “single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state.” The Florida Building Code establishes minimum standards that must be enforced by authorized state and local government enforcement agencies. Specified local boards or agencies “inspect all buildings, structures, and facilities within their jurisdictions” for the protection of the public’s health, safety, and welfare.³ The Florida Building Code must be “applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.”⁴

Statute of Repose for Construction Defects

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language imposing time limits within which legal proceedings on a cause of action must be commenced, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.⁵ Moreover, unlike a statute of limitations, a statute of repose abolishes or completely eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the limitation period specified in the statute of repose.⁶

Limitations Other Than for the Recovery of Real Property

Section 95.11(3)(c), F.S., provides that an action, other than for the recovery of real property, must be commenced within four years if the cause of action is founded on the design, planning, or construction of an improvement to real property. The four years begin running from the latest of the following:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy;
- The date of abandonment of the construction if not completed; or
- The date of completion or termination of the contract with an engineer, architect, or contractor and his or her employer.

If the action involves a latent defect, however, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, an action for a latent defect must be commenced within 10 years after the latest of the following:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy;

² Section 553.72(1), F.S.

³ Sections 553.73(1)(e) and 553.72(2), F.S.

⁴ Section 553.72(1), F.S.

⁵ *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

⁶ *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).

- The date of abandonment of the construction if not completed; or
- The date of completion or termination of the contract with an engineer, architect, or contractor and his or her employer.

Implied Warranty of Fitness and Merchantability

In 1972, the Florida Supreme Court, in *Gable v. Silver* followed a national trend and abrogated the doctrine of caveat emptor in real estate transactions as applied to initial home sales and instead applied the common law doctrine of implied warranty to such transactions.⁷ In this regard, the Court found that the sale of a newly constructed home by a home builder-seller to the first purchaser, as a matter of law, carried with it an implied warranty for construction defects affecting the fitness and merchantability (or habitability) of the home or such other improvements that “immediately support” the home. Improvements that immediately support the home have been interpreted by the courts to include a water well or septic tank.⁸ However, the implied warranties do not arise in the sale of nonresidential property or property intended for residential development.⁹ Furthermore, these warranties are limited in that they extend to original purchasers only.¹⁰

Warranties of Fitness for Work and Materials Specified in a Condominium Construction Contract

Section 718.203(2), F.S., grants condominium developers or purchasers implied warranties of fitness on work performed or materials supplied by contractors, subcontractors, and suppliers, beginning at the completion¹¹ of construction. A three year warranty exists for a roof and structural components of the building or improvement, and for mechanical and plumbing elements serving the building or improvement, but not mechanical elements serving only one unit.¹² A one year warranty exists as to all other improvements and materials.¹³

Lakeview v. Maronda

On December 6, 2011, The Supreme Court of Florida heard oral arguments on *Lakeview Reserve Homeowners Association, Inc. v. Maronda Homes, Inc.*,¹⁴ an appeal from an October 2010 decision of the Fifth District Court of Appeal. In the decision under appeal, the court determined that Lakeview Reserve could pursue the project developer, Maronda Homes, under an implied warranty theory for defects and deficiencies in the roads, drainage systems, retention ponds, and underground piping of the subdivision. At issue was the interpretation of the Supreme Court’s decision in *Conklin v. Hurley*, in which the Supreme Court determined that implied warranties extended only to the construction of a residence and “improvements immediately supporting the

⁷ *Gable v. Silver*, 258 So. 2d 11 (Fla. 4th DCA 1972), *adopted*, 264 So. 2d 418 (Fla. 1972)

⁸ *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983).

⁹ *Id.* at 659.

¹⁰ *Strathmore Riverside Villas Condominium Ass’n, Inc. v. Paver Development Corp.*, 369 So. 2d 971 (Fla. 2d DCA 1979).

¹¹ The limitations period may be tolled until control of a condominium association passes from the developer to the unit owners. *Seawatch at Marathon Condominium Ass’n, Inc. v. Charley Toppino & Sons, Inc.*, 658 So. 2d 922, 925 (Fla.1994).

¹² Section 718.203(2)(a), F.S.

¹³ Section 718.203(2)(b), F.S.

¹⁴ *Lakeview Reserve Homeowners Association, Inc v. Maronda Homes, Inc.*, 48 So. 3d 902 (Fla. 5th DCA 2010)

residence” such as water wells and septic tanks.¹⁵ The Fourth District Court of Appeal, in 1985, interpreted *Conklin* as precluding recovery by a homeowner’s association under an implied warranty theory for defects in subdivision roads and drainage improvements.¹⁶

The Florida Supreme Court will decide whether the Fourth District opinion (no implied warranties for off-site improvements) or the Fifth District opinion (implied warranties for off-site improvements) is the law in the State of Florida for homeowners. The other issue to be decided by the Supreme Court is whether the homeowners’ association itself has standing to pursue the implied warranties claim or whether a class action on behalf of the homeowners is necessary. The Fifth District Court of Appeal ruled that the association had standing to bring the action.

III. Effect of Proposed Changes:

Application of an Implied Warranty of Fitness and Merchantability or Habitability (Section 1)

The bill creates s. 553.835, F.S., denying a cause of action in law or equity based upon the doctrine of implied warranty of fitness and merchantability or habitability for offsite improvements, except as otherwise provided by law.

The definition of an “offsite improvement” may include a “street, road, driveway, sidewalk, drainage, utilit[y], or any other improvement or structure” The bill defines an “offsite improvement” in relation to the “lot on which a new home is constructed.” If the improvement is not located on or under the lot, it meets the definition of an “off-site improvement,” unless it affects the fitness and merchantability or habitability of one or more adjoining or attached structures. Regardless of its location, any improvement or structure will be deemed an “offsite improvement” if it does not immediately and directly support the fitness and merchantability or habitability of the home itself.

Existing rights, if any, of purchasers of homes or homeowners’ associations to pursue causes of action based upon contract, tort, or statute are not altered or limited by the bill.

Legislative Intent and Purpose (Preamble and Section 1)

The bill affirms limitations on the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home, and provides an explanation of the legislative intent for affirming these limitations.

Severability (Section 2)

The bill creates an undesignated section of the Florida Statutes, providing a severability clause. The severability clause directs a court to sever provisions of the bill which the court finds to be invalid and to give effect to the provisions that are valid.¹⁷

¹⁵ *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983).

¹⁶ *Port Seawall Harbor and Tennis Club Owners Ass’n., Inc. v. First Federal Savings and Loan Ass’n of Martin County*, 463 So. 2d 530 (Fla. 4th DCA 1985).

Effective Date (Section 3)

The bill provides an effective date of July 1, 2012. The limitations on the doctrine of implied warranty of fitness and merchantability or habitability, established by the bill, would apply to all cases accruing before, pending on, or filed after that date.

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 bill applies retroactively to cases accruing before and pending on the effective date of the bill, which is July 1, 2012. If the decision of the Fifth District Court of Appeal in *Lakeview Reserve Homeowners Association, Inc. v. Maronda Homes, Inc.*, created a vested right to a cause of action, the retroactive application of the bill to cases accruing before the effective date and to pending cases may be unconstitutional. “[O]nce a cause of action has accrued, the right to pursue that cause of action is generally considered a vested right.”¹⁸ Accordingly, legislation that abolishes an accrued cause of action may violate the due process clause of the Florida Constitution.¹⁹ On the other hand, a statute that relates only to a procedure or remedy generally may apply to all pending cases.²⁰

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

None.

¹⁷ “Courts are under a duty to sever unconstitutional provisions from a law and allow the remainder of the law to stand if that is possible, regardless of the lack of a severability clause in the law.” The Florida Senate, *Manual for Drafting Legislation*, 126 (6th ed. 2009) (citing *State ex rel. Boyd v. Green*, 355 So. 2d 789 (Fla. 1978)).

¹⁸ *American Optical Corporation v. Spiewak*, 73 So. 3d 120, 126 (Fla. 2011) (quoting *R.A.M. of South Fla., Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210, 1220 (Fla. 2d DCA 2004)).

¹⁹ *Id.* at 133.

²⁰ *Morris v. Swanson*, 940 So. 2d 1256, 1257 (Fla. 1st DCA 2006) (quoting *Young v. Altenhaus*, 472 So. 2d 1152, 1154 (Fla.1985)).

B. Private Sector Impact:

This bill might have an economic impact on the real estate development community. This legislation would limit the ability of new homeowners to bring a cause of action in law or equity based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Supreme Court heard oral arguments on December 6, 2011, regarding the *Maronda v. Lakeview* case and has yet to release an opinion.²¹

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 9, 2012:**

The CS modifies the definition of the term “offsite improvement” to exclude improvements that affect the fitness and merchantability or habitability of one or more adjoined or attached structures.

CS by Community Affairs on January 23, 2012:

The CS strikes the definition of habitability. The CS inserts the phrase ‘fitness and merchantability’ as interchangeable with habitability to line up with case law. The CS replaces a provision regarding the applicability of s. 553.835, F.S. The CS provides that the existing rights of purchasers of homes or homeowners’ associations to pursue certain causes of action are not altered or limited.

B. Amendments:

None.

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

²¹ SC10-2292 & SC10-2336, Fla. Sup. Ct.



417574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Delete lines 68 - 74
and insert:

(3) As used in this section, the term "offsite improvement" means a street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that:

(a) Is not located on or under the lot on which a new home is constructed, excluding the improvements that are shared by and are part of the overall structure of two or more separately owned homes that are adjoined or attached whereby the improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures;



417574

14 or

15 (b) Is located on or under the lot but does not immediately
16 and directly support the fitness and merchantability or
17 habitability of the new home itself.

18

19 Delete line 83

20 and insert:

21 statute, including, but not limited to, ss. 718.203 and 719.203.

By the Committee on Community Affairs; and Senator Bennett

578-02165-12

20121196c1

1 A bill to be entitled
 2 An act relating to residential construction
 3 warranties; creating s. 553.835, F.S.; providing
 4 legislative findings; providing legislative intent to
 5 affirm the limitations to the doctrine of implied
 6 warranty of fitness and merchantability or
 7 habitability associated with the construction and sale
 8 of a new home; providing a definition; prohibiting a
 9 cause of action in law or equity based upon the
 10 doctrine of implied warranty of fitness and
 11 merchantability or habitability for offsite
 12 improvements; providing that the existing rights of
 13 purchasers of homes or homeowners' associations to
 14 pursue certain causes of action are not altered or
 15 limited; providing for applicability of the act;
 16 providing for severability; providing an effective
 17 date.
 18
 19 WHEREAS, the Legislature recognizes and agrees with the
 20 limitations on the applicability of the doctrine of implied
 21 warranty of fitness and merchantability or habitability for a
 22 new home as established in the seminal cases of *Gable v. Silver*,
 23 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dismissed, 264
 24 So.2d 418 (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654 (Fla.
 25 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*
 26 *First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),
 27 and does not wish to expand any prospective rights,
 28 responsibilities, or liabilities resulting from these decisions,
 29 and

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

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30 WHEREAS, the recent decision by the Fifth District Court of
 31 Appeal rendered in October of 2010, in *Lakeview Reserve*
 32 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902
 33 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty
 34 of fitness and merchantability or habitability for a new home to
 35 the construction of roads, drainage systems, retention ponds,
 36 and underground pipes, which the court described as essential
 37 services, supporting a new home, and
 38 WHEREAS, the Legislature finds, as a matter of public
 39 policy, that the *Maronda* case goes beyond the fundamental
 40 protections that are necessary for a purchaser of a new home and
 41 that form the basis for imposing an implied warranty of fitness
 42 and merchantability or habitability for a new home, and creates
 43 uncertainty in the state's fragile real estate and construction
 44 industry, and
 45 WHEREAS, it is the intent of the Legislature to reject the
 46 decision by the Fifth District Court of Appeal in the *Maronda*
 47 case insofar as it expands the doctrine of implied warranty and
 48 fitness and merchantability or habitability for a new home to
 49 include essential services as defined by the court, NOW
 50 THEREFORE,
 51
 52 Be It Enacted by the Legislature of the State of Florida:
 53
 54 Section 1. Section 553.835, Florida Statutes, is created to
 55 read:
 56 553.835 Implied warranties.—
 57 (1) The Legislature finds that the courts have reached
 58 different conclusions concerning the scope and extent of the

Page 2 of 4

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59 common law doctrine of implied warranty of fitness and
 60 merchantability or habitability for improvements immediately
 61 supporting the structure of a new home, which creates
 62 uncertainty in the state's fragile real estate and construction
 63 industry.

64 (2) It is the intent of the Legislature to affirm the
 65 limitations to the doctrine of implied warranty of fitness and
 66 merchantability or habitability associated with the construction
 67 and sale of a new home.

68 (3) As used in this section, the term "offsite improvement"
 69 means the street, road, sidewalk, drainage, utilities, or any
 70 other improvement or structure that is not located on or under
 71 the lot on which a new home is constructed, or that is located
 72 on or under the lot but that does not immediately and directly
 73 support the fitness and merchantability or habitability of the
 74 home itself.

75 (4) There is no cause of action in law or equity available
 76 to a purchaser of a home or to a homeowners' association based
 77 upon the doctrine or theory of implied warranty of fitness and
 78 merchantability or habitability for damages to offsite
 79 improvements. However, this section does not alter or limit the
 80 existing rights of purchasers of homes or homeowners'
 81 associations to pursue any other cause of action arising from
 82 defects in offsite improvements based upon contract, tort, or
 83 statute.

84 Section 2. If any provision of the act or its application
 85 to any person or circumstance is held invalid, the invalidity
 86 does not affect other provisions or applications of the act
 87 which can be given effect without the invalid provision or

578-02165-12 20121196c1

88 application, and to this end the provisions of this act are
 89 severable.

90 Section 3. This act shall take effect July 1, 2012, and
 91 applies to all cases accruing before, pending on, or filed after
 92 that date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Warranties

Bill Number CS/SB 1196
(if applicable)

Name Keith Hetrick

Amendment Barcode _____
(if applicable)

Job Title OF Counsel

681-6810
251-1838

Address 215 S. Monroe

Phone _____

Street

Tall FL 32301

City

State

Zip

Khetrick@Brandand
E-mail cassel.com

Speaking: For Against Information

Representing Association of FL Community Developers & FL Home Builders Assoc

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)

2/09/12
Meeting Date

Topic Residential Construction Waiver Bill Number SB 1196
(if applicable)

Name Jim Hunter Amendment Barcode _____
(if applicable)

Job Title President

Address 307 W. Park Ave, Suite 214 Phone 850/601-2174
Apalachee, FL 32301 E-mail afcd@afcd.com
Street City State Zip

Speaking: For Against Information

Representing Assn. of Fla. Community Developers 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-12
Meeting Date

Topic Construction Warranties

Bill Number 1196
(if applicable)

Name Richard Gentry

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2305 BRAEBURN CIR
Street

Phone 251-1837

TLH FL 32309
City State Zip

E-mail R.Gentry@comcast.net

Speaking: For Against Information

Representing AIF, N.E. FLA. BUILDERS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic Residential Construction Warranties Bill Number 1196
(if applicable)

Name Saejey Kurian, Esq. Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 1 Phone (239) 433-7707
Street

Ft. Myers, FL 33966 E-mail skurian@becker-polickoff.com
City State Zip

Speaking: For Against Information

Representing CALL - Community Association Leadership Lobby

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic _____

Bill Number 1196
(if applicable)

Name Diana Ferguson

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 119 S Monroe St Ste 202
Street

Phone 850-481-6788

Tall FL 32308
City State Zip

E-mail dferguson@reynold.com

Speaking: For Against Information

Representing Community Advocacy Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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9 FEB 2012
Meeting Date

Topic RESIDENTIAL WARRANTIES

Bill Number SB 1196
(if applicable)

Name PAUL JESS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 218 S MONROE ST.
Street
TALLAHASSEE FL 32301
City State Zip

Phone 850-224-9403

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/09/2012
Meeting Date

Topic HOME CONSTRUCTION WARRANTIES -

Bill Number SB 1196
(if applicable)

Name HOWARD E. "GENE" ADAMS

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY -

Address 215 SOUTH MONROE ST., 2ND FLOOR
Street

Phone 850-222-3533

TALLAHASSEE FLA. 32301-1839
City State Zip

E-mail GENE@PENNINGTONLAW.COM

Speaking: For Against Information

Representing REAL PROPERTY PROBATE + TRUST LAW SECTION OF FLA. BAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/8/2012
Meeting Date

Topic _____

Bill Number SB 1196
(if applicable)

Name JOSE L. GONZALEZ

Amendment Barcode _____
(if applicable)

Job Title VP GOVT AFFAIRS

Address 576 N. ADAMS ST
Street
TALLAHASSEE, FL 32301
City State Zip

Phone 224-7173

E-mail ~~BB~~ jgonzalez@aif.com

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic Residential Construction Waivers

Bill Number 51196
(if applicable)

Name Tom Edwards

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone 904-219-4547

City _____ State _____ Zip _____

E-mail TSE@EDWARDSRABATZ.COM

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

2 / 9 / 2012

Meeting Date

Topic _____

Bill Number 1196
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 748

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Alimony

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	_____	_____	BC	_____
3.	_____	_____	RC	_____
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 revises laws relating to alimony. Specifically, the bill:

- Revises the factors that a court must consider in awarding alimony to include the net income available to each party after the application of the alimony award.
- Requires the findings that a court must make in determining to award alimony be in writing.
- Revises the circumstances under which a court may consider adultery by either spouse in its determination of the amount of alimony.
- Allows a court in determining the amount of alimony to be awarded to consider the adultery of a party only to the extent to which the adultery caused a depletion of marital assets or a reduction in the income of a party.
- Renames “permanent alimony” to “long-term alimony” and requires the court to make a finding that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties.
- Requires a court to make written findings regarding regarding all relevant factors under the court’s consideration when ordering an award of alimony.
- Specifies circumstances under which the retirement of the obligor of an alimony award justifies the modification of the alimony award.

- Limits the circumstances in which a court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.
- Prohibits a court from reserving jurisdiction to reinstate an alimony award if the court terminates the award based on the existence of a supportive relationship.
- Provides that the modification or termination of an alimony award based on the existence of a supportive relationship may be retroactive to the date of the filing of the petition for modification or termination.
- Prohibits a court from awarding long-term alimony unless the court finds that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage.
- Prohibits a court from requiring security, such as a life insurance policy or bond, to secure an alimony award unless special circumstances are shown.

This bill amends the following sections of the Florida Statutes: 61.08, 61.14, and 61.19.

II. Present Situation:

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. A judgment of dissolution of marriage may not be granted unless one of the following facts appears, which must be generally pleaded:

- the marriage is irretrievably broken.¹
- mental incapacity of one of the parties. However, a dissolution may not be allowed unless the party alleged to be incapacitated must have been adjudged incapacitated according to the provisions relating to guardianship law for a preceding period of at least 3 years.²

Under s. 61.075, F.S., a court must distribute the marital assets and liabilities based on the premise that the distribution be equal.³ The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S. In a contested marital dissolution in which a stipulation and agreement has not been entered and filed, the distribution of marital assets or liabilities must be supported by factual findings in the court order based on competent substantial evidence with reference to the relevant statutory factors.

After a court has equitably distributed the marital assets and liabilities, alimony may be ordered by the court. Alimony is used to provide support to the financially dependent spouse.⁴ In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony, may be bridge-the-gap,⁵ rehabilitative,⁶ durational,⁷ or permanent in nature⁸ or any combination these forms of alimony.⁹ The types of alimony are described below:

¹ Section 61.052(1)(a), F.S.

² Section 61.052(1)(b), F.S.

³ Section 61.075(1), F.S.

⁴ Victoria Ho and Jennifer Johnson, *Overview of Florida Alimony Law*, 78 FLA. B.J. 71 (Oct. 2004).

⁵ Section 61.08(5), F.S.

⁶ Section 61.08(6), F.S.

⁷ Section 61.08(7), F.S.

⁸ Section 61.08(8), F.S.

⁹ Section 61.08(1), F.S.

- Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.¹⁰
- Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate skills or credentials.¹¹
- Durational alimony may be awarded if permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration.¹²
- Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following dissolution of marriage.¹³

Alimony pendente lite is temporary alimony awarded to a spouse during pendency of a dissolution of marriage action to furnish that spouse with the means of living so he or she may not become a charge upon the state while the case is being adjudicated.¹⁴ A court may award suit money to cover a spouse's attorney fees in dissolution of marriage action.¹⁵

The court may consider the adultery of either spouse and the circumstances in determining the amount of alimony, if any, to be awarded. In any award of alimony, the court may order periodic or payments in a lump sum or both.¹⁶

Section 61.08(2), F.S., outlines the following factors that a court must consider in awarding alimony:

- (a) The standard of living established during the marriage.
- (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.
- (d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- (e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) The responsibilities each party will have with regard to any minor children they have in common.

¹⁰ Section 61.08(5), F.S.

¹¹ Section 61.08(6), F.S.

¹² Section 61.08(7), F.S.

¹³ Section 61.08(8), F.S.

¹⁴ *Grace v. Grace*, 162 So. 2d 314, 320 (Fla. 1st DCA 1964).

¹⁵ "Suit money" is defined to mean "Attorney's fees and court costs allowed or awarded by a court; esp., in some jurisdictions, a husband's payment to his wife to cover her reasonable attorney's fees in a divorce action." BLACK'S LAW DICTIONARY (9th ed. 2009).

¹⁶ *Id.*

- (h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- (j) Any other factor necessary to do equity and justice between the parties.

Under s. 61.08(3), F.S., a court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. Section 61.08(9), F.S., specifies that an award of alimony may not leave the payor with significantly less net income than the net income of the recipient, absent exceptional circumstances.

III. Effect of Proposed Changes:

The bill revises requirements for a court to award alimony. In a proceeding for dissolution of marriage, the court may grant alimony to either party which alimony may be bridge-the-gap, rehabilitative, durational, or long-term in nature, or any combination of these forms of alimony.

Under the bill, the court is required to make *written*, specific factual findings in its determination of whether to award alimony or maintenance. Additionally, the court must make written findings regarding all relevant factors.

The bill revises the factors that a court must consider in awarding alimony to include: the designation of all or a portion of the payment of an alimony award as nontaxable to the recipient and nondeductible to the payor; and the net income available to each party after the application of the alimony award. A court may only consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded to the extent that the adultery caused a significant depletion in the marital assets or caused a significant reduction in the income of a party. The court will no longer have the discretion to look at any other factor necessary to do equity and justice between the parties in awarding alimony or maintenance unless that factor is specifically identified in the award with findings of fact justifying the application of the factor.

The bill renames “permanent alimony” to “long-term alimony” and revises the findings a court must make to award it to a party. Specifically, in order to award long-term alimony, a court must include findings that no other form of alimony will provide for the needs and necessities of life of the recipient as they were established during the marriage of the parties.

A court may order a party who is ordered to pay alimony to provide security in an amount adequate to secure the award but may only do so upon a showing of special circumstances. The court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modified if the underlying alimony award is modified.

The bill prohibits a court that terminates an alimony award based on the existence of a supportive relationship from reserving jurisdiction to reinstate an alimony award. A modification or termination of an alimony award based on the existence of a supportive relationship may be retroactive to the date of filing of the petition for modification or termination.

Under the bill, the fact that an obligor has reached normal retirement age for his or her profession, has retired, and has no intent to return to work must be considered a substantial change in circumstance as a matter of law. The court must consider the following factors of the obligor in determining whether the obligor's retirement is reasonable: age, health, motivation for retirement, type of work, and normal retirement age for that type of work.

The bill limits the circumstances in which a court may grant a final dissolution of marriage when the court reserves jurisdiction of the matter. During the first 180 days after the date of service of the original petition for the divorce, a court may reserve jurisdiction only when it is clearly necessary for the best interests of the parties or their children. The desire of one of the parties to marry another person does not justify the use of this process. If the more than 180 days have passed after the date of service, the bill specifies the circumstances in which a court may reserve jurisdiction. The court must enter temporary orders that it finds are necessary to protect the interests of the parties and their children. The temporary orders may include, but are not limited to the following substantive issues:

- Restriction on the sale or disposition of property.
- Protection and preservation of the marital assets.
- Establishment of support.
- Provision for maintenance of health insurance.
- Provision for maintenance of life insurance.

The court is not required to enter temporary orders to protect the parties and their children if the court is reserving jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorneys fees and costs.

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.

C. Government Sector Impact:

Although the bill includes many amendments to ch. 61, F.S., relating to dissolution of marriage actions, based on a fiscal note from the Office of the State Courts Administrator on comparable legislation, a major workload impact on the judiciary is not anticipated.

VI. Technical Deficiencies:

The bill has a reference to “permanent periodic alimony” on lines 142-143. It is unclear whether the term should refer to “long-term alimony” to conform to changes in the bill that rename “permanent alimony” to “long-term alimony.”

VII. Related Issues:

The bill renames “permanent alimony” to “long-term alimony” and requires the court to make a finding “that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties *and* that no other form [of alimony] is fair and reasonable under the circumstances of the parties.” An alimony award may provide for “the needs and necessities of life *of the recipient* as established during the marriage *of the parties*,” but this form of alimony may not be interpreted as “fair and reasonable under the circumstances *of the parties*.” Although reasonable individuals may disagree, in some circumstances the two factors may be interpreted to be inconsistent with each other.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 9, 2012:**

The committee substitute makes the following changes that were not in original bill:

- Revises the factors that a court must consider in awarding alimony to include the net income available to each party after the application of the alimony award.
- Revises the circumstances under which adultery by either spouse may be considered by the court in determining the amount of alimony.
- Renames “permanent alimony” to “long-term alimony” and requires the court to make a finding that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties.
- Requires a court to make written findings regarding all relevant factors under the court’s consideration when ordering an award of alimony.
- Specifies factors the court must consider in determining whether the retirement of the obligor of an alimony award is reasonable.
- Limits the circumstances in which a court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

- Removes provisions that would have limited the maximum amount of an alimony award.
- Removes provisions that would have limited the duration of an alimony award.
- Removes provisions that would have terminated an alimony award upon the obligor reaching retirement age.
- Removes provisions that provided that the bill is a material change in circumstances.
- Removes provisions that provided revised criteria for a court to use in determining the existence of a supportive relationship.

B. Amendments:

None.



600742

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.08, Florida Statutes, is amended to
read:

61.08 Alimony.—

(1) In a proceeding for dissolution of marriage, the court
may grant alimony to either party, which alimony may be bridge-
the-gap, rehabilitative, durational, or long-term ~~permanent~~ in
nature or any combination of these forms of alimony where
appropriate. In any award of alimony, the court may order
periodic payments, ~~or~~ payments in lump sum, or both. The court



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14 may consider the adultery of either spouse and the circumstances
15 thereof in determining the amount of alimony, if any, to be
16 awarded to the extent that the adultery caused a significant
17 depletion in the marital assets or caused a significant
18 reduction in the income of a party. In all dissolution actions,
19 the court shall include findings of fact relative to the factors
20 enumerated in subsection (2) supporting an award or denial of
21 alimony.

22 (2) In determining whether to award alimony or maintenance,
23 the court shall first make, in writing, a specific factual
24 determination as to whether either party has an actual need for
25 alimony or maintenance and whether either party has the ability
26 to pay alimony or maintenance. If the court finds that a party
27 has a need for alimony or maintenance and that the other party
28 has the ability to pay alimony or maintenance, then in
29 determining the proper type and amount of alimony or maintenance
30 under subsections (5)-(8), the court shall consider and make
31 written findings regarding all relevant factors, including, ~~but~~
32 ~~not limited to:~~

33 (a) The standard of living established during the marriage.

34 (b) The duration of the marriage.

35 (c) The age and the physical and emotional condition of
36 each party.

37 (d) The financial resources of each party, including the
38 nonmarital and the marital assets and liabilities distributed to
39 each.

40 (e) The earning capacities, educational levels, vocational
41 skills, and employability of the parties and, when applicable,
42 the time necessary for either party to acquire sufficient



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43 education or training to enable such party to find appropriate
44 employment.

45 (f) The contribution of each party to the marriage,
46 including, but not limited to, services rendered in homemaking,
47 child care, education, and career building of the other party.

48 (g) The responsibilities each party will have with regard
49 to any minor children the parties ~~they~~ have in common.

50 (h) The tax treatment and consequences to both parties of
51 any alimony award, including the designation of all or a portion
52 of the payment as a nontaxable, nondeductible payment.

53 (i) All sources of income available to either party,
54 including income available to either party through investments
55 of any asset held by that party.

56 (j) The net income available to each party after the
57 application of the alimony award.

58 (k) ~~(j)~~ Any other factor necessary to do equity and justice
59 between the parties, if that factor is specifically identified
60 in the award with findings of fact justifying the application of
61 the factor.

62 (3) To the extent necessary to protect an award of alimony,
63 the court may order any party who is ordered to pay alimony to
64 purchase or maintain a life insurance policy or a bond, or to
65 otherwise secure such alimony award with any other assets which
66 may be suitable for that purpose.

67 (4) For purposes of determining alimony, there is a
68 rebuttable presumption that a short-term marriage is a marriage
69 having a duration of less than 7 years, a moderate-term marriage
70 is a marriage having a duration of greater than 7 years but less
71 than 17 years, and long-term marriage is a marriage having a



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72 duration of 17 years or greater. The length of a marriage is the
73 period of time from the date of marriage until the date of
74 filing of an action for dissolution of marriage.

75 (5) Bridge-the-gap alimony may be awarded to assist a party
76 by providing support to allow the party to make a transition
77 from being married to being single. Bridge-the-gap alimony is
78 designed to assist a party with legitimate identifiable short-
79 term needs, and the length of an award may not exceed 2 years.
80 An award of bridge-the-gap alimony terminates upon the death of
81 either party or upon the remarriage of the party receiving
82 alimony. An award of bridge-the-gap alimony shall not be
83 modifiable in amount or duration.

84 (6) (a) Rehabilitative alimony may be awarded to assist a
85 party in establishing the capacity for self-support through
86 either:

- 87 1. The redevelopment of previous skills or credentials; or
88 2. The acquisition of education, training, or work
89 experience necessary to develop appropriate employment skills or
90 credentials.

91 (b) In order to award rehabilitative alimony, there must be
92 a specific and defined rehabilitative plan which shall be
93 included as a part of any order awarding rehabilitative alimony.

94 (c) An award of rehabilitative alimony may be modified or
95 terminated in accordance with s. 61.14 based upon a substantial
96 change in circumstances, upon noncompliance with the
97 rehabilitative plan, or upon completion of the rehabilitative
98 plan.

99 (7) Durational alimony may be awarded when permanent
100 periodic alimony is inappropriate. The purpose of durational



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101 alimony is to provide a party with economic assistance for a set
102 period of time following a marriage of short or moderate
103 duration or following a marriage of long duration if there is no
104 ongoing need for support on a long-term ~~permanent~~ basis as
105 provided in subsection (8). An award of durational alimony
106 terminates upon the death of either party or upon the remarriage
107 of the party receiving alimony. The amount of an award of
108 durational alimony may be modified or terminated based upon a
109 substantial change in circumstances in accordance with s. 61.14.
110 However, The length of an award of durational alimony may not be
111 modified except under exceptional circumstances and may not
112 exceed the length of the marriage.

113 (8) Permanent alimony shall be renamed as long-term
114 alimony, and long-term ~~Permanent~~ alimony may be awarded to
115 provide for the needs and necessities of life as they were
116 established during the marriage of the parties for a party who
117 lacks the financial ability to meet his or her needs and
118 necessities of life following a dissolution of marriage.
119 Permanent alimony shall be renamed as long-term alimony, and
120 long-term ~~Permanent~~ alimony may be awarded following a marriage
121 of long duration if such an award is appropriate upon
122 consideration of the factors set forth in subsection (2),
123 following a marriage of moderate duration if such an award is
124 appropriate based upon clear and convincing evidence after
125 consideration of the factors set forth in subsection (2), or
126 following a marriage of short duration if there are written
127 findings of exceptional circumstances. In awarding long-term
128 ~~permanent~~ alimony, the court shall include findings ~~a finding~~
129 that no other form of alimony will provide for the needs and



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130 necessities of life of the recipient as they were established
131 during the marriage of the parties and that no other form is
132 fair and reasonable under the circumstances of the parties. An
133 award of long-term ~~permanent~~ alimony remains payable until
134 ~~terminates upon~~ the death of either party or upon the remarriage
135 of the party receiving alimony. An award may be modified or
136 terminated based upon a substantial change in circumstances or
137 upon the existence of a supportive relationship in accordance
138 with s. 61.14.

139 (9) The award of alimony may not leave the payor with
140 significantly less net income than the net income of the
141 recipient unless there are written findings of exceptional
142 circumstances. The court shall make written findings regarding
143 the relative incomes and standard of living as established
144 during the marriage.

145 (10) (a) With respect to any order requiring the payment of
146 alimony entered on or after January 1, 1985, unless ~~the~~
147 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
148 court shall direct in the order that the payments of alimony be
149 made through the appropriate depository as provided in s.
150 61.181.

151 (b) With respect to any order requiring the payment of
152 alimony entered before January 1, 1985, upon the subsequent
153 appearance, on or after that date, of one or both parties before
154 the court having jurisdiction for the purpose of modifying or
155 enforcing the order or in any other proceeding related to the
156 order, or upon the application of either party, unless ~~the~~
157 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
158 court shall modify the terms of the order as necessary to direct



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159 that payments of alimony be made through the appropriate
160 depository as provided in s. 61.181.

161 (c) If there is no minor child, alimony payments need not
162 be directed through the depository.

163 (d)1. If there is a minor child of the parties and both
164 parties so request, the court may order that alimony payments
165 need not be directed through the depository. In this case, the
166 order of support shall provide, or be deemed to provide, that
167 either party may subsequently apply to the depository to require
168 that payments be made through the depository. The court shall
169 provide a copy of the order to the depository.

170 2. If ~~the provisions of~~ subparagraph 1. applies apply,
171 either party may subsequently file with the depository an
172 affidavit alleging default or arrearages in payment and stating
173 that the party wishes to initiate participation in the
174 depository program. The party shall provide copies of the
175 affidavit to the court and the other party or parties. Fifteen
176 days after receipt of the affidavit, the depository shall notify
177 all parties that future payments shall be directed to the
178 depository.

179 3. In IV-D cases, the IV-D agency shall have the same
180 rights as the obligee in requesting that payments be made
181 through the depository.

182 Section 2. Paragraph (b) of subsection (1) of section
183 61.14, Florida Statutes, is amended to read:

184 61.14 Enforcement and modification of support, maintenance,
185 or alimony agreements or orders.—

186 (1)

187 (b)1. The court may reduce or terminate an award of alimony



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188 upon specific written findings by the court that since the
189 granting of a divorce and the award of alimony a supportive
190 relationship has existed between the obligee and a person with
191 whom the obligee resides. On the issue of whether alimony should
192 be reduced or terminated under this paragraph, the burden is on
193 the obligor to prove by a preponderance of the evidence that a
194 supportive relationship exists.

195 2. In determining whether an existing award of alimony
196 should be reduced or terminated because of an alleged supportive
197 relationship between an obligee and a person who is not related
198 by consanguinity or affinity and with whom the obligee resides,
199 the court shall elicit the nature and extent of the relationship
200 in question. The court shall give consideration, without
201 limitation, to circumstances, including, but not limited to, the
202 following, in determining the relationship of an obligee to
203 another person:

204 a. The extent to which the obligee and the other person
205 have held themselves out as a married couple by engaging in
206 conduct such as using the same last name, using a common mailing
207 address, referring to each other in terms such as "my husband"
208 or "my wife," or otherwise conducting themselves in a manner
209 that evidences a permanent supportive relationship.

210 b. The period of time that the obligee has resided with the
211 other person in a permanent place of abode.

212 c. The extent to which the obligee and the other person
213 have pooled their assets or income or otherwise exhibited
214 financial interdependence.

215 d. The extent to which the obligee or the other person has
216 supported the other, in whole or in part.



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217 e. The extent to which the obligee or the other person has
218 performed valuable services for the other.

219 f. The extent to which the obligee or the other person has
220 performed valuable services for the other's company or employer.

221 g. Whether the obligee and the other person have worked
222 together to create or enhance anything of value.

223 h. Whether the obligee and the other person have jointly
224 contributed to the purchase of any real or personal property.

225 i. Evidence in support of a claim that the obligee and the
226 other person have an express agreement regarding property
227 sharing or support.

228 j. Evidence in support of a claim that the obligee and the
229 other person have an implied agreement regarding property
230 sharing or support.

231 k. Whether the obligee and the other person have provided
232 support to the children of one another, regardless of any legal
233 duty to do so.

234 3. This paragraph does not abrogate the requirement that
235 every marriage in this state be solemnized under a license, does
236 not recognize a common law marriage as valid, and does not
237 recognize a de facto marriage. This paragraph recognizes only
238 that relationships do exist that provide economic support
239 equivalent to a marriage and that alimony terminable on
240 remarriage may be reduced or terminated upon the establishment
241 of equivalent equitable circumstances as described in this
242 paragraph. The existence of a conjugal relationship, though it
243 may be relevant to the nature and extent of the relationship, is
244 not necessary for the application of ~~the provisions of this~~
245 paragraph.



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246 4. A court terminating an alimony award based on the
247 existence of a supportive relationship may not reserve
248 jurisdiction to later reinstate alimony.

249 Section 3. Section 61.19, Florida Statutes, is amended to
250 read:

251 61.19 Entry of judgment of dissolution of marriage; ~~τ~~ delay
252 period; bifurcation.-

253 (1) A ~~Ne~~ final judgment of dissolution of marriage may not
254 be entered until at least 20 days have elapsed from the date of
255 filing the original petition for dissolution of marriage, ~~τ~~ but
256 the court, on a showing that injustice would result from this
257 delay, may enter a final judgment of dissolution of marriage at
258 an earlier date.

259 (2) During the first 180 days after the date of service of
260 the original petition for dissolution of marriage, the court
261 shall not grant a final dissolution of marriage with a
262 reservation of jurisdiction to subsequently determine all other
263 substantive issues except in exceptional circumstances when it
264 is clearly necessary for the best interests of the parties or
265 their children. The desire of one of the parties to remarry does
266 not justify the use of this process. If more than 180 days have
267 elapsed after the date of service of the original petition for
268 dissolution of marriage, the court may grant a final dissolution
269 of marriage with a reservation of jurisdiction to subsequently
270 determine all other substantive issues only if the court enters
271 such other temporary orders as are necessary to protect the
272 interests of the parties and their children which shall remain
273 effective until such time as all other issues can be adjudicated
274 by the court. The temporary orders necessary to protect the



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275 interests of the children and the parties which may be entered
276 before the granting of a dissolution of marriage without an
277 adjudication of all substantive issues may include, but shall
278 not be limited to, temporary orders that:

- 279 (a) Restrict the sale or disposition of property.
- 280 (b) Protect and preserve the marital assets.
- 281 (c) Establish support.
- 282 (d) Provide for maintenance of health insurance.
- 283 (e) Provide for maintenance of life insurance.

284
285 The court is not required to enter temporary orders to protect
286 the parties and their children if the court enters a final
287 judgment of dissolution of marriage which adjudicates
288 substantially all of the substantive issues between the parties
289 but reserves jurisdiction to address ancillary issues such as
290 the entry of a qualified domestic relations order or the
291 adjudication of attorney fees and costs.

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

293
294 ===== T I T L E A M E N D M E N T =====

295 And the title is amended as follows:

296 Delete everything before the enacting clause
297 and insert:

298 A bill to be entitled
299 An act relating to dissolution of marriage; amending
300 s. 61.08, F.S.; revising factors to be considered for
301 alimony awards, including adultery; requiring a court
302 to make certain written findings concerning alimony;
303 revising provisions for award of durational alimony;



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304 redesignating permanent alimony as long-term alimony
305 and revising provisions relating to its award;
306 requiring written findings regarding the standard of
307 living of the parties as established during the
308 marriage; amending s. 61.14, F.S.; prohibiting a court
309 from reserving jurisdiction to reinstate an alimony
310 award if a supportive relationship ends; amending s.
311 61.19, F.S.; prohibiting the court from granting a
312 final dissolution of marriage with a reservation of
313 jurisdiction during the first 180 days after the date
314 of service of the original petition for dissolution of
315 marriage to subsequently determine all other
316 substantive issues except in exceptional
317 circumstances; authorizing the court to grant a final
318 dissolution of marriage with a reservation of
319 jurisdiction to subsequently determine all other
320 substantive issues only if the court enters such other
321 temporary orders as are necessary to protect the
322 interests of the parties and their children; providing
323 circumstances in which the court is not required to
324 enter a temporary order; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

1 **Senate Substitute for Amendment (600742) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 61.08, Florida Statutes, is amended to
7 read:

8 61.08 Alimony.—

9 (1) In a proceeding for dissolution of marriage, the court
10 may grant alimony to either party, which alimony may be bridge-
11 the-gap, rehabilitative, durational, or long-term ~~permanent~~ in
12 nature or any combination of these forms of alimony where
13 appropriate. In any award of alimony, the court may order



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14 periodic payments or payments in lump sum or both. The court may
15 consider the adultery of either spouse and the circumstances
16 thereof in determining the amount of alimony, if any, to be
17 awarded to the extent that the adultery caused a significant
18 depletion in the marital assets or caused a significant
19 reduction in the income of a party. In all dissolution actions,
20 the court shall include findings of fact relative to the factors
21 enumerated in subsection (2) supporting an award or denial of
22 alimony.

23 (2) In determining whether to award alimony or maintenance,
24 the court shall first make, in writing, a specific factual
25 determination as to whether either party has an actual need for
26 alimony or maintenance and whether either party has the ability
27 to pay alimony or maintenance. If the court finds that a party
28 has a need for alimony or maintenance and that the other party
29 has the ability to pay alimony or maintenance, then in
30 determining the proper type and amount of alimony or maintenance
31 under subsections (5)-(8), the court shall consider and make
32 written findings regarding all relevant factors, including, ~~but~~
33 ~~not limited to:~~

34 (a) The standard of living established during the marriage.

35 (b) The duration of the marriage.

36 (c) The age and the physical and emotional condition of
37 each party.

38 (d) The financial resources of each party, including the
39 nonmarital and the marital assets and liabilities distributed to
40 each.

41 (e) The earning capacities, educational levels, vocational
42 skills, and employability of the parties and, when applicable,



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43 the time necessary for either party to acquire sufficient
44 education or training to enable such party to find appropriate
45 employment.

46 (f) The contribution of each party to the marriage,
47 including, but not limited to, services rendered in homemaking,
48 child care, education, and career building of the other party.

49 (g) The responsibilities each party will have with regard
50 to any minor children the parties ~~they~~ have in common.

51 (h) The tax treatment and consequences to both parties of
52 any alimony award, which may include the designation of all or a
53 portion of the payment as nontaxable to the recipient and
54 nondeductible to the payor ~~including the designation of all or a~~
55 ~~portion of the payment as a nontaxable, nondeductible payment.~~

56 (i) All sources of income available to either party,
57 including income available to either party through investments
58 of any asset held by that party.

59 (j) The net income available to each party after the
60 application of the alimony award.

61 (k) ~~(j)~~ Any other factor necessary to do equity and justice
62 between the parties, if that factor is specifically identified
63 in the award along with findings of fact justifying the
64 application of the factor.

65 (3) To the extent necessary to protect an award of alimony,
66 the court may order any party who is ordered to pay alimony to
67 purchase or maintain a life insurance policy or a bond, or to
68 otherwise secure such alimony award with any other assets which
69 may be suitable for that purpose in an amount adequate to secure
70 the alimony award. Such security may be awarded only upon a
71 showing of special circumstances. If the court finds special



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72 circumstances and awards such security, the court shall make
73 specific evidentiary findings regarding the availability, cost,
74 and financial impact on the obligated party. Any security may be
75 modifiable if the underlying alimony award is modified.

76 (4) For purposes of determining alimony, there is a
77 rebuttable presumption that a short-term marriage is a marriage
78 having a duration of less than 7 years, a moderate-term marriage
79 is a marriage having a duration of ~~greater than~~ 7 years or
80 greater but less than 17 years, and long-term marriage is a
81 marriage having a duration of 17 years or greater. The length of
82 a marriage is the period of time from the date of marriage until
83 the date of filing of an action for dissolution of marriage.

84 (5) Bridge-the-gap alimony may be awarded to assist a party
85 by providing support to allow the party to make a transition
86 from being married to being single. Bridge-the-gap alimony is
87 designed to assist a party with legitimate identifiable short-
88 term needs, and the length of an award may not exceed 2 years.
89 An award of bridge-the-gap alimony terminates upon the death of
90 either party or upon the remarriage of the party receiving
91 alimony. An award of bridge-the-gap alimony shall not be
92 modifiable in amount or duration.

93 (6) (a) Rehabilitative alimony may be awarded to assist a
94 party in establishing the capacity for self-support through
95 either:

- 96 1. The redevelopment of previous skills or credentials; or
97 2. The acquisition of education, training, or work
98 experience necessary to develop appropriate employment skills or
99 credentials.

100 (b) In order to award rehabilitative alimony, there must be



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101 a specific and defined rehabilitative plan which shall be
102 included as a part of any order awarding rehabilitative alimony.

103 (c) An award of rehabilitative alimony may be modified or
104 terminated in accordance with s. 61.14 based upon a substantial
105 change in circumstances, upon noncompliance with the
106 rehabilitative plan, or upon completion of the rehabilitative
107 plan.

108 (7) Durational alimony may be awarded when permanent
109 periodic alimony is inappropriate. The purpose of durational
110 alimony is to provide a party with economic assistance for a set
111 period of time following a marriage of short or moderate
112 duration or following a marriage of long duration if there is no
113 ongoing need for support on a long-term ~~permanent~~ basis as
114 provided in subsection (8). An award of durational alimony
115 terminates upon the death of either party or upon the remarriage
116 of the party receiving alimony. The amount of an award of
117 durational alimony may be modified or terminated based upon a
118 substantial change in circumstances in accordance with s. 61.14.
119 However, The length of an award of durational alimony may not be
120 modified except under exceptional circumstances and may not
121 exceed the length of the marriage.

122 (8) Long-term ~~Permanent~~ alimony may be awarded to provide
123 for the needs and necessities of life as they were established
124 during the marriage of the parties for a party who lacks the
125 financial ability to meet his or her needs and necessities of
126 life following a dissolution of marriage. Long-term ~~Permanent~~
127 alimony may be awarded following a marriage of long duration if
128 such an award is appropriate upon consideration of the factors
129 set forth in subsection (2), following a marriage of moderate



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130 duration if such an award is appropriate based upon clear and
131 convincing evidence after consideration of the factors set forth
132 in subsection (2), or following a marriage of short duration if
133 there are written findings of exceptional circumstances. In
134 awarding long-term ~~permanent~~ alimony, the court shall include
135 findings a finding that no other form of alimony will provide
136 for the needs and necessities of life of the recipient as
137 established during the marriage of the parties and that no other
138 form is fair and reasonable under the circumstances of the
139 parties. An award of long-term ~~permanent~~ alimony remains payable
140 until terminates upon the death of either party or upon the
141 remarriage of the party receiving alimony. An award may be
142 modified or terminated based upon a substantial change in
143 circumstances or upon the existence of a supportive relationship
144 in accordance with s. 61.14.

145 (9) The award of alimony may not leave the payor with
146 significantly less net income than the net income of the
147 recipient unless there are written findings of exceptional
148 circumstances.

149 (10) (a) With respect to any order requiring the payment of
150 alimony entered on or after January 1, 1985, unless ~~the~~
151 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
152 court shall direct in the order that the payments of alimony be
153 made through the appropriate depository as provided in s.
154 61.181.

155 (b) With respect to any order requiring the payment of
156 alimony entered before January 1, 1985, upon the subsequent
157 appearance, on or after that date, of one or both parties before
158 the court having jurisdiction for the purpose of modifying or



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159 enforcing the order or in any other proceeding related to the
160 order, or upon the application of either party, unless ~~the~~
161 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
162 court shall modify the terms of the order as necessary to direct
163 that payments of alimony be made through the appropriate
164 depository as provided in s. 61.181.

165 (c) If there is no minor child, alimony payments need not
166 be directed through the depository.

167 (d)1. If there is a minor child of the parties and both
168 parties so request, the court may order that alimony payments
169 need not be directed through the depository. In this case, the
170 order of support shall provide, or be deemed to provide, that
171 either party may subsequently apply to the depository to require
172 that payments be made through the depository. The court shall
173 provide a copy of the order to the depository.

174 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
175 either party may subsequently file with the depository an
176 affidavit alleging default or arrearages in payment and stating
177 that the party wishes to initiate participation in the
178 depository program. The party shall provide copies of the
179 affidavit to the court and the other party or parties. Fifteen
180 days after receipt of the affidavit, the depository shall notify
181 all parties that future payments shall be directed to the
182 depository.

183 3. In IV-D cases, the IV-D agency shall have the same
184 rights as the obligee in requesting that payments be made
185 through the depository.

186 Section 2. Paragraph (b) of subsection (1) of section
187 61.14, Florida Statutes, is amended, and subsection (12) is



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188 added to that section, to read:

189 61.14 Enforcement and modification of support, maintenance,
190 or alimony agreements or orders.—

191 (1)

192 (b)1. The court may reduce or terminate an award of alimony
193 upon specific written findings by the court that since the
194 granting of a divorce and the award of alimony a supportive
195 relationship has existed between the obligee and a person with
196 whom the obligee resides. On the issue of whether alimony should
197 be reduced or terminated under this paragraph, the burden is on
198 the obligor to prove by a preponderance of the evidence that a
199 supportive relationship exists.

200 2. In determining whether an existing award of alimony
201 should be reduced or terminated because of an alleged supportive
202 relationship between an obligee and a person who is not related
203 by consanguinity or affinity and with whom the obligee resides,
204 the court shall elicit the nature and extent of the relationship
205 in question. The court shall give consideration, without
206 limitation, to circumstances, including, but not limited to, the
207 following, in determining the relationship of an obligee to
208 another person:

209 a. The extent to which the obligee and the other person
210 have held themselves out as a married couple by engaging in
211 conduct such as using the same last name, using a common mailing
212 address, referring to each other in terms such as "my husband"
213 or "my wife," or otherwise conducting themselves in a manner
214 that evidences a permanent supportive relationship.

215 b. The period of time that the obligee has resided with the
216 other person in a permanent place of abode.



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217 c. The extent to which the obligee and the other person
218 have pooled their assets or income or otherwise exhibited
219 financial interdependence.

220 d. The extent to which the obligee or the other person has
221 supported the other, in whole or in part.

222 e. The extent to which the obligee or the other person has
223 performed valuable services for the other.

224 f. The extent to which the obligee or the other person has
225 performed valuable services for the other's company or employer.

226 g. Whether the obligee and the other person have worked
227 together to create or enhance anything of value.

228 h. Whether the obligee and the other person have jointly
229 contributed to the purchase of any real or personal property.

230 i. Evidence in support of a claim that the obligee and the
231 other person have an express agreement regarding property
232 sharing or support.

233 j. Evidence in support of a claim that the obligee and the
234 other person have an implied agreement regarding property
235 sharing or support.

236 k. Whether the obligee and the other person have provided
237 support to the children of one another, regardless of any legal
238 duty to do so.

239 3. This paragraph does not abrogate the requirement that
240 every marriage in this state be solemnized under a license, does
241 not recognize a common law marriage as valid, and does not
242 recognize a de facto marriage. This paragraph recognizes only
243 that relationships do exist that provide economic support
244 equivalent to a marriage and that alimony terminable on
245 remarriage may be reduced or terminated upon the establishment



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246 of equivalent equitable circumstances as described in this
247 paragraph. The existence of a conjugal relationship, though it
248 may be relevant to the nature and extent of the relationship, is
249 not necessary for the application of ~~the provisions of this~~
250 paragraph.

251 4. A court terminating an alimony award based on the
252 existence of a supportive relationship may not reserve
253 jurisdiction to later reinstate alimony.

254 5. A modification or termination of an alimony award is
255 retroactive to the date of filing.

256 (12) The fact that an obligor has reached the normal
257 retirement age for his or her profession, has retired, and has
258 no intent to return to work shall be considered a substantial
259 change in circumstance as a matter of law. In determining
260 whether the obligor's retirement is reasonable, the court shall
261 consider the following factors of the payor:

262 (a) Age.

263 (b) Health.

264 (c) Motivation for retirement.

265 (d) Type of work.

266 (e) Normal retirement age for that type of work.

267 Section 3. Section 61.19, Florida Statutes, is amended to
268 read:

269 61.19 Entry of judgment of dissolution of marriage; ~~;~~ delay
270 period; bifurcation.—

271 (1) A ~~Ne~~ final judgment of dissolution of marriage may not
272 be entered until at least 20 days have elapsed following ~~from~~
273 the date of filing the original petition for dissolution of
274 marriage, ~~;~~ but the court, on a showing that injustice would



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275 result from this delay, may enter a final judgment of
276 dissolution of marriage at an earlier date.

277 (2) During the first 180 days following the date of service
278 of the original petition for dissolution of marriage, the court
279 may not grant a final dissolution of marriage with a reservation
280 of jurisdiction to subsequently determine all other substantive
281 issues except in exceptional circumstances when it is clearly
282 necessary for the best interests of the parties or their
283 children. The desire of one of the parties to remarry does not
284 justify the use of this process. If more than 180 days have
285 elapsed following the date of service of the original petition
286 for dissolution of marriage, the court may grant a final
287 dissolution of marriage with a reservation of jurisdiction to
288 subsequently determine all other substantive issues only if the
289 court enters such other temporary orders as are necessary to
290 protect the interests of the parties and their children, which
291 shall remain effective until such time as all other issues can
292 be adjudicated by the court. The temporary orders necessary to
293 protect the interests of the children and the parties, which may
294 be entered before the granting of a dissolution of marriage
295 without an adjudication of all substantive issues, may include,
296 but need not be limited to, temporary orders that:

297 (a) Restrict the sale or disposition of property.

298 (b) Protect and preserve the marital assets.

299 (c) Establish support.

300 (d) Provide for maintenance of health insurance.

301 (e) Provide for maintenance of life insurance.

302
303 The court is not required to enter temporary orders to protect



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304 the parties and their children if the court enters a final
305 judgment of dissolution of marriage which adjudicates
306 substantially all of the substantive issues between the parties
307 but reserves jurisdiction to address ancillary issues, such as
308 the entry of a qualified domestic relations order or the
309 adjudication of attorney fees and costs.

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

311
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause
315 and insert:

316 A bill to be entitled

317 An act relating to dissolution of marriage; amending
318 s. 61.08, F.S.; revising the factors to be considered
319 for alimony awards, including adultery; requiring a
320 court to make certain written findings concerning
321 alimony; providing that if the court orders a party to
322 provide security to protect an award of alimony, the
323 court may so order only upon a showing of special
324 circumstances; requiring that the court make specific
325 evidentiary findings regarding the availability, cost,
326 and financial impact on the obligated party to support
327 the award of security; revising provisions for an
328 award of durational alimony; redesignating permanent
329 alimony as long-term alimony and revising provisions
330 relating to its award; amending s. 61.14, F.S.;
331 prohibiting a court from reserving jurisdiction to
332 reinstate an alimony award if a supportive



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333 relationship ends; providing that a modification or
334 termination of an alimony award is retroactive to the
335 date of filing; requiring the court to consider
336 certain specified factors in determining if the
337 obligor's retirement is reasonable; amending s. 61.19,
338 F.S.; prohibiting the court from granting a final
339 dissolution of marriage with a reservation of
340 jurisdiction during the first 180 days after the date
341 of service of the original petition for dissolution of
342 marriage to subsequently determine all other
343 substantive issues except in exceptional
344 circumstances; authorizing the court to grant a final
345 dissolution of marriage with a reservation of
346 jurisdiction to subsequently determine all other
347 substantive issues only if the court enters such other
348 temporary orders as are necessary to protect the
349 interests of the parties and their children; providing
350 circumstances in which the court is not required to
351 enter a temporary order; providing an effective date.



293168

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment to Substitute Amendment (276912)

Delete lines 254 - 261

and insert:

5. A modification or termination of an alimony award may be retroactive to the date of filing of the petition for modification or termination.

(12) The fact that an obligor has reached the normal retirement age for his or her profession, has retired, and has no intent to return to work shall be considered a substantial change in circumstance as a matter of law. In determining whether the obligor's retirement is reasonable, the court shall consider the following factors of the obligor:



586346

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment to Substitute Amendment (276912)

Delete lines 255 - 261

and insert:

retroactive to the date of the filing of the petition for modification or termination.

(12) The fact that an obligor has reached the normal retirement age for his or her profession, has retired, and has no intent to return to work shall be considered a substantial change in circumstance as a matter of law. In determining whether the obligor's retirement is reasonable, the court shall consider the following factors of the obligor:

By Senator Diaz de la Portilla

36-00747-12

2012748__

1 A bill to be entitled
 2 An act relating to alimony; amending s. 61.08, F.S.;
 3 revising factors to be considered for alimony awards;
 4 capping awards of alimony at a certain percentage of
 5 the payor's monthly net income; requiring a court to
 6 make certain written findings concerning alimony;
 7 revising factors to be considered in whether to award
 8 alimony or maintenance; revising provisions for the
 9 tax treatment and consequences of alimony; revising
 10 provisions relating to the protection of awards of
 11 alimony; revising provisions for awards of bridge-the-
 12 gap alimony and durational alimony; redesignating
 13 permanent alimony as long-term alimony and revising
 14 provisions relating to its award; providing
 15 nonreinstatement of alimony awards due to supportive
 16 relationships; providing termination of alimony upon
 17 full retirement age; repealing s. 2, ch. 2010-199 and
 18 s. 80, ch. 2011-92, Laws of Florida, relating to the
 19 applicability of specified prior amendments to s.
 20 61.08, F.S.; providing applicability for amendments
 21 made by the act to s. 61.08, F.S.; providing for
 22 retroactive effect; amending s. 61.14, F.S.; revising
 23 provisions relating to the effect of cohabitation on
 24 an award of alimony; providing that in the event of
 25 the obligor's remarriage or residing with another
 26 person, income and assets of the obligor's spouse or
 27 person with whom the obligor resides may not be
 28 considered in the redetermination in a modification
 29 action; providing that if an alimony award has been

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30 modified to terminate due to a supportive relationship
 31 and that supportive relationship does not produce a
 32 marriage, the alimony may not be reinstated; providing
 33 that if the court orders alimony concurrent with a
 34 child support order, the alimony award may not be
 35 modified due to the termination of child support;
 36 providing an effective date.
 37

38 Be It Enacted by the Legislature of the State of Florida:
 39

40 Section 1. Section 61.08, Florida Statutes, is amended to
 41 read:

42 61.08 Alimony.—

43 (1) In a proceeding for dissolution of marriage under s.
 44 61.052(1)(a), the court may grant alimony to either party, which
 45 alimony may be bridge-the-gap, rehabilitative, durational, or
 46 ~~long-term permanent in nature or any combination of these forms~~
 47 ~~of alimony~~. In any award of alimony, the court may order
 48 periodic payments or payments in lump sum or both, which may not
 49 exceed 20 percent of the payor's monthly net income to include
 50 all sources of income averaged over the last 3 years of the
 51 marriage. ~~The court may consider the adultery of either spouse~~
 52 ~~and the circumstances thereof in determining the amount of~~
 53 ~~alimony, if any, to be awarded~~. In all dissolution actions, the
 54 court shall include findings of fact relative to the factors
 55 enumerated in subsection (2) supporting an award or denial of
 56 alimony.

57 (2) In determining whether to award alimony or maintenance,
 58 the court shall first make, in writing, a specific factual

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59 determination as to whether either party has an actual need for
 60 alimony or maintenance and whether either party has the ability
 61 to pay alimony or maintenance. If the court finds that a party
 62 has a need for alimony or maintenance and that the other party
 63 has the ability to pay alimony or maintenance, then in
 64 determining the proper type and amount of alimony or maintenance
 65 under subsections (5)-(8), the court shall consider all relevant
 66 factors, including, but not limited to:

67 ~~(a) The standard of living established during the marriage.~~

68 (a) (b) The duration of the marriage.

69 (b) (c) The age and the physical and emotional condition of
 70 each party.

71 (c) (d) The financial resources of each party, only to
 72 include including the nonmarital and the marital assets and
 73 liabilities acquired during the marriage distributed to each.

74 (d) (e) The earning capacities, educational levels,
 75 vocational skills, and employability of the parties and, when
 76 applicable, the time necessary for either party to acquire
 77 sufficient education or training to enable such party to find
 78 appropriate employment.

79 (e) (f) The contribution of each party to the marriage,
 80 including, but not limited to, services rendered in homemaking,
 81 child care, education, and career building of the other party.

82 (f) (g) The responsibilities each party will have with
 83 regard to any minor children they have in common.

84 (g) (h) The tax treatment and consequences to both parties
 85 of any alimony award, including the designation of all ~~or a~~
 86 ~~portion~~ of the payment as taxable to the recipient and
 87 deductible to the payor a nontaxable, nondeductible payment.

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88 (h) (i) All sources of income available to either party,
 89 including income available to either party through investments
 90 of any asset held by that party that were acquired during the
 91 marriage.

92 ~~(j) Any other factor necessary to do equity and justice~~
 93 ~~between the parties.~~

94 (3) (a) The court may require the payor to maintain a life
 95 insurance policy or bond to protect an award of alimony only if
 96 there is a specific factual determination in writing as to
 97 whether the recipient has an actual need. An order to secure a
 98 life insurance policy or a bond to protect an award of alimony
 99 shall be based upon due consideration of the following factors:

100 1. Age and insurability of the payor.

101 2. Cost of insurance, including decreasing term-life
 102 insurance.

103 3. Amount of the judgment.

104 4. Policies carried during the marriage.

105 5. Duration of the alimony order.

106 6. Prevailing interest rates at the time of the order.

107 7. Other obligations of the payor.

108 (b) An order to protect an alimony award is modifiable upon
 109 a substantial change in circumstance in accordance with s. 61.14
 110 and terminates as provided in subsection (9) To the extent
 111 necessary to protect an award of alimony, the court may order
 112 any party who is ordered to pay alimony to purchase or maintain
 113 a life insurance policy or a bond, or to otherwise secure such
 114 alimony award with any other assets which may be suitable for
 115 that purpose.

116 (4) For purposes of determining alimony, the court shall

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 117 ~~recognize there is a rebuttable presumption~~ that a short-term
 118 marriage is a marriage having a duration of less than 7 years, a
 119 moderate-term marriage is a marriage having a duration of
 120 greater than 7 years but less than 20 17 years, and long-term
 121 marriage is a marriage having a duration of 20 17 years or
 122 greater. The length of a marriage is the period of time from the
 123 date of marriage until the date of filing of an action for
 124 dissolution of marriage.

125 (5) Bridge-the-gap alimony may be awarded to assist a party
 126 by providing support to allow the party to make a transition
 127 from being married to being single. Bridge-the-gap alimony is
 128 designed to assist a party with legitimate identifiable short-
 129 term needs, and the length of an award may not exceed 2 years.
 130 An award of bridge-the-gap alimony terminates upon the death of
 131 either party or upon the remarriage of the party receiving
 132 alimony. An award of bridge-the-gap alimony is shall not be
 133 modifiable in accordance with s. 61.14 amount or duration.

134 (6) (a) Rehabilitative alimony may be awarded to assist a
 135 party in establishing the capacity for self-support through
 136 either:

- 137 1. The redevelopment of previous skills or credentials; or
- 138 2. The acquisition of education, training, or work
 139 experience necessary to develop appropriate employment skills or
 140 credentials.

141 (b) In order to award rehabilitative alimony, there must be
 142 a specific and defined rehabilitative plan which shall be
 143 included as a part of any order awarding rehabilitative alimony.

144 (c) An award of rehabilitative alimony shall may be
 145 modified or terminated in accordance with s. 61.14 based upon a

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 146 substantial change in circumstances, upon noncompliance with the
 147 rehabilitative plan, or upon completion of the rehabilitative
 148 plan.

149 (7) Durational alimony may be awarded for a moderate-term
 150 or long-term marriage as defined in subsection (4) ~~when~~
 151 ~~permanent periodic alimony is inappropriate~~. The purpose of
 152 durational alimony is to provide a party with economic
 153 assistance for a set period of time following a marriage of
 154 ~~short or~~ moderate duration or following a marriage of long
 155 duration if there is no ongoing need for support on a long-term
 156 permanent basis as provided in subsection (8). An award of
 157 durational alimony terminates upon the death of either party or
 158 upon the remarriage of the party receiving alimony. The amount
 159 of an award of durational alimony shall may be modified ~~or~~
 160 ~~terminated~~ based upon a substantial change in circumstances or
 161 terminated upon the existence of a supportive relationship in
 162 accordance with s. 61.14. ~~However,~~ The length of an award of
 163 durational alimony may not exceed 50 percent of ~~be modified~~
 164 ~~except under exceptional circumstances and may not exceed the~~
 165 length of the marriage.

166 (8) Long-term ~~Permanent~~ alimony may be awarded for a
 167 marriage having a duration of 20 years or greater as provided in
 168 subsection (4), may not exceed 60 percent of the length of the
 169 marriage, and may be extended as needed to continue support of a
 170 receiving party who was disabled during the marriage. The
 171 Division of Disability Determinations of the Department of
 172 Health must authenticate each claim of disability under this
 173 subsection. If the payor is certified as disabled by the
 174 Division of Disability Determinations of the Department of

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175 ~~Health, the award of alimony shall be significantly reduced or~~
 176 ~~terminated to provide for the needs and necessities of life as~~
 177 ~~they were established during the marriage of the parties for a~~
 178 ~~party who lacks the financial ability to meet his or her needs~~
 179 ~~and necessities of life following a dissolution of marriage.~~
 180 ~~Permanent alimony may be awarded following a marriage of long~~
 181 ~~duration if such an award is appropriate upon consideration of~~
 182 ~~the factors set forth in subsection (2), following a marriage of~~
 183 ~~moderate duration if such an award is appropriate based upon~~
 184 ~~clear and convincing evidence after consideration of the factors~~
 185 ~~set forth in subsection (2), or following a marriage of short~~
 186 ~~duration if there are written findings of exceptional~~
 187 ~~circumstances. In awarding permanent alimony, the court shall~~
 188 ~~include a finding that no other form of alimony is fair and~~
 189 ~~reasonable under the circumstances of the parties. An award of~~
 190 ~~long-term permanent alimony terminates upon the death of either~~
 191 ~~party, or upon the remarriage of the party receiving alimony, or~~
 192 ~~as provided in subsection (9). An award shall may be modified or~~
 193 ~~terminated based upon a substantial change in circumstances or~~
 194 ~~upon the existence of a supportive relationship in accordance~~
 195 ~~with s. 61.14.~~

196 (9) Any award of alimony terminates upon the payor
 197 attaining the full retirement age when the payor is eligible for
 198 the old-age retirement benefit under the federal Old-Age,
 199 Survivors, and Disability Insurance Program, 42 U.S.C. s. 416,
 200 as amended, as of the date of filing of an action for
 201 dissolution of marriage. The payor's ability to work beyond that
 202 age may not be used as a reason to extend alimony.

203 (10)(9) The award of alimony may not leave the payor with

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204 ~~significantly less net income than the net income of the~~
 205 ~~recipient unless there are written findings of exceptional~~
 206 ~~circumstances.~~

207 (11) In accordance with s. 61.14, if an alimony award has
 208 been modified to terminate due to a supportive relationship and
 209 that supportive relationship does not produce a marriage, the
 210 recipient is not entitled to reinstatement of alimony from the
 211 payor.

212 (12)(10)(a) With respect to any order requiring the payment
 213 of alimony entered on or after January 1, 1985, unless the
 214 provisions of paragraph (c) or paragraph (d) apply, the court
 215 shall direct in the order that the payments of alimony be made
 216 through the appropriate depository as provided in s. 61.181.

217 (b) With respect to any order requiring the payment of
 218 alimony entered before January 1, 1985, upon the subsequent
 219 appearance, on or after that date, of one or both parties before
 220 the court having jurisdiction for the purpose of modifying or
 221 enforcing the order or in any other proceeding related to the
 222 order, or upon the application of either party, unless the
 223 provisions of paragraph (c) or paragraph (d) apply, the court
 224 shall modify the terms of the order as necessary to direct that
 225 payments of alimony be made through the appropriate depository
 226 as provided in s. 61.181.

227 (c) If there is no minor child, alimony payments need not
 228 be directed through the depository.

229 (d)1. If there is a minor child of the parties and both
 230 parties so request, the court may order that alimony payments
 231 need not be directed through the depository. In this case, the
 232 order of support shall provide, or be deemed to provide, that

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233 either party may subsequently apply to the depository to require
234 that payments be made through the depository. The court shall
235 provide a copy of the order to the depository.

236 2. If the provisions of subparagraph 1. apply, either party
237 may subsequently file with the depository an affidavit alleging
238 default or arrearages in payment and stating that the party
239 wishes to initiate participation in the depository program. The
240 party shall provide copies of the affidavit to the court and the
241 other party or parties. Fifteen days after receipt of the
242 affidavit, the depository shall notify all parties that future
243 payments shall be directed to the depository.

244 3. In IV-D cases, the IV-D agency shall have the same
245 rights as the obligee in requesting that payments be made
246 through the depository.

247 Section 2. Section 2 of chapter 2010-199 and section 80 of
248 chapter 2011-92, Laws of Florida, are repealed.

249 Section 3. The amendments to s. 61.08, Florida Statutes,
250 made by this act constitute a material change of circumstance
251 that warrants modification of existing alimony judgments that
252 exceed durational limits set forth in s. 61.08(4)-(9), Florida
253 Statutes, as amended by this act. Any modification filed by a
254 payor pursuant to this section solely because the existing
255 alimony judgment exceeds the durational limits set forth in s.
256 61.08(4)-(9), Florida Statutes, as amended by this act, may be
257 filed only as follows:

258 (1) A payor who was married to the alimony recipient for
259 more than 7 years may file a modification action in accordance
260 with s. 61.08(4), Florida Statutes, no earlier than 2 years
261 after the effective date of this act.

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262 (2) A payor who is eligible for the full old-age retirement
263 benefit under the federal Old-Age, Survivors, and Disability
264 Insurance Program, 42 U.S.C. s. 416, or who will become eligible
265 for such benefit within 3 years after the effective date of this
266 act, may file a modification action no earlier than 1 year after
267 the effective date of this act.

268
269 The amendments to s. 61.08, Florida Statutes, made by this act
270 do not provide a right to seek or receive modification of an
271 existing alimony judgment in which the parties have agreed in
272 writing that their alimony judgment is not modifiable or in
273 which the parties have expressed in writing their intention that
274 their agreed alimony provisions survive the judgment and
275 therefore are not modifiable.

276 Section 4. Paragraph (b) of subsection (1) of section
277 61.14, Florida Statutes, is amended, and paragraphs (c), (d),
278 and (e) are added to subsection (11) of that section, to read:

279 61.14 Enforcement and modification of support, maintenance,
280 or alimony agreements or orders.—

281 (1)

282 (b)1. The court ~~must~~ may reduce or terminate an award of
283 alimony ~~if it determines upon specific written findings by the~~
284 ~~court~~ that since the granting of a divorce and the award of
285 alimony a supportive relationship has existed between the
286 obligee and a person with whom the obligee resides. The court
287 shall make specific written findings that support such a
288 determination. On the issue of whether alimony should be reduced
289 or terminated under this paragraph, the burden is on the obligor
290 to prove by a preponderance of the evidence that a supportive

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291 ~~relationship exists.~~

292 2. A person is deemed to maintain a supportive relationship
 293 when he or she shares a primary residence together with or
 294 without another person for a period of at least 3 continuous
 295 months in a common household. In determining whether the obligee
 296 is maintaining a common household, the court may consider any of
 297 the following factors an existing award of alimony should be
 298 reduced or terminated because of an alleged supportive
 299 relationship between an obligee and a person who is not related
 300 by consanguinity or affinity and with whom the obligee resides,
 301 the court shall elicit the nature and extent of the relationship
 302 in question. The court shall give consideration, without
 303 limitation, to circumstances, including, but not limited to, the
 304 following, in determining the relationship of an obligee to
 305 another person:

306 a. Oral or written statements or representations made to
 307 third parties regarding the relationship of the cohabitants.

308 b. The economic interdependence of the couple or economic
 309 dependence of one party on the other.

310 c. The common household couple engaging in conduct and
 311 collaborative roles in furtherance of their life together.

312 d. The benefit in the life of either or both of the common
 313 household parties from their relationship.

314 e. The community reputation of the parties as a couple.

315 f. Other relevant and material factors.

316 ~~a. The extent to which the obligee and the other person~~
 317 ~~have held themselves out as a married couple by engaging in~~
 318 ~~conduct such as using the same last name, using a common mailing~~
 319 ~~address, referring to each other in terms such as "my husband"~~

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320 ~~or "my wife," or otherwise conducting themselves in a manner~~
 321 ~~that evidences a permanent supportive relationship.~~

322 ~~b. The period of time that the obligee has resided with the~~
 323 ~~other person in a permanent place of abode.~~

324 ~~c. The extent to which the obligee and the other person~~
 325 ~~have pooled their assets or income or otherwise exhibited~~
 326 ~~financial interdependence.~~

327 ~~d. The extent to which the obligee or the other person has~~
 328 ~~supported the other, in whole or in part.~~

329 ~~e. The extent to which the obligee or the other person has~~
 330 ~~performed valuable services for the other.~~

331 ~~f. The extent to which the obligee or the other person has~~
 332 ~~performed valuable services for the other's company or employer.~~

333 ~~g. Whether the obligee and the other person have worked~~
 334 ~~together to create or enhance anything of value.~~

335 ~~h. Whether the obligee and the other person have jointly~~
 336 ~~contributed to the purchase of any real or personal property.~~

337 ~~i. Evidence in support of a claim that the obligee and the~~
 338 ~~other person have an express agreement regarding property~~
 339 ~~sharing or support.~~

340 ~~j. Evidence in support of a claim that the obligee and the~~
 341 ~~other person have an implied agreement regarding property~~
 342 ~~sharing or support.~~

343 ~~k. Whether the obligee and the other person have provided~~
 344 ~~support to the children of one another, regardless of any legal~~
 345 ~~duty to do so.~~

346 ~~3. This paragraph does not abrogate the requirement that~~
 347 ~~every marriage in this state be solemnized under a license, does~~
 348 ~~not recognize a common law marriage as valid, and does not~~

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349 ~~recognize a de facto marriage. This paragraph recognizes only~~
350 ~~that relationships do exist that provide economic support~~
351 ~~equivalent to a marriage and that alimony terminable on~~
352 ~~remarriage may be reduced or terminated upon the establishment~~
353 ~~of equivalent equitable circumstances as described in this~~
354 ~~paragraph. The existence of a conjugal relationship, though it~~
355 ~~may be relevant to the nature and extent of the relationship, is~~
356 ~~not necessary for the application of the provisions of this~~
357 ~~paragraph.~~

358 (11)

359 (c) If the obligor remarries or resides with another
360 person, income and assets of the obligor's spouse or person with
361 whom the obligor resides may not be considered in the
362 redetermination in a modification action.

363 (d) If an alimony award has been modified to terminate due
364 to a supportive relationship and that supportive relationship
365 does not produce a marriage, the obligee is not entitled to
366 reinstatement of alimony from the obligor.

367 (e) If the court orders alimony concurrent with a child
368 support order, the alimony award may not be modified due to the
369 termination of child support when the child support payments
370 end.

371 Section 5. 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)

Meeting Date _____

Topic Alimony Bill Number 748
(if applicable)

Name THOMAS DUGGAR Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 1391 Timberlake Rd Phone 850-386-6124
Street

Jall FL 32310 E-mail thomw@duggardduggar.com
City State Zip

Speaking: For Against Information

Representing Family Law Section of 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.

THE FLORIDA SENATE
APPEARANCE RECORD

2-9-12

~~1-31-12~~

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

Meeting Date

Topic ALIMONY REFORM

Bill Number SB 748
(if applicable)

Name R.C. LINDSEY

Amendment Barcode _____
(if applicable)

Job Title CHAIRMAN

Address 6368 SE HELD CT-101

Phone 772-287-9235

Street

STUART FL 34997

City

State

Zip

E-mail PLMDIKL@HOTMAIL.COM

Speaking: For Against Information

Representing ALLIANCE FOR FREEDOM FROM ALIMONY, 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)

2/9/12

Meeting Date

Topic ALUMNY REFORM

Bill Number SB 748
(if applicable)

Name DEBORAH ISRAEL

Amendment Barcode _____
(if applicable)

Job Title PROFESSOR

Address 874 STILLWATER COURT
Street

Phone 954-389-6395

WESTON FL 33327
City State Zip

E-mail debbie.israel@bellsouth.net

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2012
Meeting Date

Topic Alimony Reform

Bill Number SB 748
(if applicable)

Name ALAN FRISHER

Amendment Barcode _____
(if applicable)

Job Title CERTIFIED DIVORCE FINANCIAL ANALYST

Address 7630 N. Wickham Rd

Phone 321-242-7826

Melbourne FL 32940
City State Zip

E-mail ALAN.FRISHER@gmail.com

Speaking: For Against Information

Representing FLORIDA ALIMONY REFORM

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/12
Meeting Date

Topic Alimony Reform

Bill Number s 748
(if applicable)

Name Brian Keith Reynolds

Amendment Barcode _____
(if applicable)

Job Title Sr. Applications Analyst

Address 1589 Arnold Dr

Phone 321-432-5159

MELBOURNE FL 32935
Street City State Zip

E-mail BRIANR69@GMAIL.COM

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/09/12

Meeting Date

Topic ALYONY

Bill Number SB 748
(if applicable)

Name CAREY FEE

Amendment Barcode _____
(if applicable)

Job Title PROFESSOR OF ARCHITECTURE, FAMU

Address 3149 FENWICK CT

Phone 850 524 9245

Street

Tallahassee

City

FL

State

32309

Zip

E-mail Carey.fee@famuc.edu

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Alimony

Bill Number SB 748
(if applicable)

Name Gordon E. Finley, Ph.D.

Amendment Barcode _____
(if applicable)

Job Title Professor of Psychology Emeritus, FIU

Address 8970 SW 122 Pl., Apt. 122

Phone 305-495-8962

Street

Miami

FL

33186

E-mail adoptaowl@aol.com

City

State

Zip

Speaking: For Against Information

Representing Florida Alimony Reform

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

2-9-12

Meeting Date

Topic _____

Bill Number SB 748
(if applicable)

Name Patty Morrison

Amendment Barcode _____
(if applicable)

Job Title mail processor

Address 13493 Brighton St.

Phone (352) 678-0286

Street

Spring Hill

Fl.

34609

City

State

Zip

E-mail pmorrison4@tampabay.rr.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/9/12
Meeting Date

Topic Alimony Reform

Bill Number ~~SB 747~~ SB 748
(if applicable)

Name KENNETH ALBINO

Amendment Barcode _____
(if applicable)

Job Title AIRLINE PILOT

Address 1542 Jupiter Cove Dr. #407C
Street

Phone 561-670-3222

Jupiter FL 33469
City State Zip

E-mail KDALBINO@BellSouth.net

Speaking: For Against Information

Representing FLORIDA ALIMONY REFORM

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 9 / 2012

Meeting Date

Topic _____

Bill Number 748

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SJR 838

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Homestead Assessment Limitation/Low-income Senior Citizens

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.	White	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The joint resolution proposes an amendment to the Florida Constitution to allow the Legislature, by general law, to authorize counties and municipalities to limit the assessments of the homesteads of eligible, low-income senior citizens. The assessments will be limited to the assessed value of the property in the prior year if the just value of the property is equal to or less than 150 percent of the average just value of homestead property in the respective county or municipality. The general law must allow counties and municipalities to provide this limitation by ordinance in a manner prescribed by general law. The general law must designate a state agency to annually provide the average just value of homestead property based on the prior year's tax roll to each property appraiser.

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

This joint resolution amends Article VII, section 4 of the Florida Constitution.

II. Present Situation:

Property Valuation in Florida

Median home values in Florida climbed from \$23,100 in 1940 to \$105,500 in 2000,¹ but more recently sales prices have been stagnant across the state, with median sales prices for existing homes dropping 3 percent in 2011.² Some economists, however, predict renewed increases in home prices “in the Miami and Naples markets” throughout 2012 and the beginning of 2013, with a “recovery [that] is likely to roll northward to Central Florida and then North Florida.”³

Although Florida homeowners may face the “frustrating paradox[.]” of falling real estate markets combined with rising property taxes,⁴ Florida law provides a number of options to reduce property tax liability. The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit”⁵

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.⁶

Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁷

¹ U.S. Census Bureau, Housing and Household Economic Statistics Division, *Historical Census of Housing Tables: Home Values* (Last Revised Oct. 31, 2011), available at <http://www.census.gov/hhes/www/housing/census/historic/values.html> (last visited Feb. 2, 2012).

² In 2011, median sales price for existing homes was \$131,700, down from \$135,900 in 2010. Florida Realtors, *Florida’s housing sales activity higher as 2011 ends* (Jan. 20, 2012), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=270287> (last visited Feb. 2, 2012).

³ Florida Realtors, *Leading U. S. economists: Fla.’s housing market bouncing back* (Dec. 7, 2011), <http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=268417> (last visited Feb. 2, 2012) (quoting Dr. Lawrence Yun, chief economist for the National Association of Realtors®).

⁴ See Tim Padgett, TIME, *Florida’s Property Taxes Go Wacky in Housing Slump* (June 29, 2009), available at <http://www.time.com/time/business/article/0,8599,1907198,00.html> (last visited Feb. 2, 2012) (quoting Kurt Wenner, research director at Florida Tax Watch in Tallahassee).

⁵ FLA. CONST. art. VII, s. 2.

⁶ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁷ FLA. CONST. art. VII, s. 4(a).

- Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁸
- Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 years of age or older.⁹
- The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.¹⁰
- Certain working waterfront property is assessed based upon the property's current use.¹¹

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹²

Tax Exemptions and Assessment Limitations for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹³

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person with legal and equitable title to real estate and who maintains thereon the permanent residence of the owner is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemption for Certain Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000. This additional exemption applies to any person who has legal and equitable title to real estate who maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed \$20,000. In the

⁸ FLA. CONST. art. VII, s. 4(e).

⁹ FLA. CONST. art. VII, s. 4(f).

¹⁰ FLA. CONST. art. VII, s. 4(i).

¹¹ FLA. CONST. art. VII, s. 4(j).

¹² FLA. CONST. art. VII, ss. 3 and 6.

¹³ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); See also *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

implementing legislation for the exemption, the Legislature indexed the \$20,000 figure to inflation. Adjusted for inflation, the current senior low income exemption is around \$26,000.¹⁴

Section 196.075, F.S., is the general law enacted to allow counties and municipalities to grant the additional homestead exemption for certain senior citizens. The county or municipality must grant this additional exemption by ordinance, which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.¹⁵ For purposes of the exemption, “household income” means “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”¹⁶ The term “household” means “a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.”¹⁷ In 2010, 59 boards of county commissioners and 206 city commissions had enacted local ordinances granting the additional exemption for seniors.¹⁸

Homestead Assessment Limitation: Save Our Homes

The *Save Our Homes* assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead’s assessed value can increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).¹⁹ In addition, an assessment may not exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution, to provide for the portability of the accrued benefit under the *Save Our Homes* assessment limitation. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the accrued benefit to the new homestead.

III. Effect of Proposed Changes:

This joint resolution amends Article VII, section 4 of the Florida Constitution, to authorize the Legislature, by general law, to allow counties or municipalities to limit ad valorem tax assessments on homestead property of low-income seniors to the previous year’s assessed value of the property.

To be eligible for the limitation on assessment, the property must qualify for the low-income senior exemption under section 6(d) of the Florida Constitution and the value of the homestead property must be equal to or less than 150 percent of the average just value of homestead property within the respective county or municipality.

¹⁴ Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).

¹⁵ See s. 196.075, F.S. (Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities.).

¹⁶ Section 196.075(1)(b), F.S.

¹⁷ Section 196.075(1)(a), F.S.

¹⁸ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited Feb. 3, 2012) (Data obtained from tax rolls submitted to the Department of Revenue for 2010).

¹⁹ FLA. CONST. art. VII, s. 4(d).

The joint resolution is not self-executing, but rather it requires implementation by general law. The general law implementing the constitutional provision must allow counties and municipalities to provide, by ordinance in a manner prescribed by general law, the additional limitation on the assessed value of the property. The general law must specify the state agency that will calculate the average just value of homestead property within each county and municipality based on the prior year's tax roll of each county.

The general law must designate a state agency that will annually supply the information on the average just value of homestead property to each property appraiser.

If approved by electors in the 2012 General Election, the constitutional amendment becomes effective on Tuesday, January 8, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"²⁰

²⁰ *Roberts v. Doyle*, 43 So. 3d 654, 659, citing *Florida Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.²¹

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision. The amendment would become effective on January 8, 2013.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Qualified, low-income, senior homeowners may benefit from an ad valorem assessment limit in counties or municipalities that adopt an ordinance granting the limitation contemplated by the amendment to the Florida Constitution proposed by this Senate Joint Resolution.

C. Government Sector Impact:

The Revenue Estimating Conference has not evaluated the potential impact of this joint resolution. However, the resolution, if passed, will only affect a county or municipality that chooses to impose the assessment limit.

The Division of Elections of the Department of State is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14.²²

The Department of State normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.²³

The joint resolution requires that the Legislature designate a state agency to produce a report on average homestead values. If the Department of Revenue (DOR) is named as the agency to produce the report of average homestead value, which must be provided

²¹ Department of State, *SJR 314 Analysis* (Oct. 31, 2011) (on file with the Senate Judiciary Committee).

²² *Id.*

²³ *Id.*

annually to property appraisers, DOR indicates it can generate this document by making a small adjustment to an existing report DOR provides annually to the Governor's office.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The ballot summary reflects the most recent annual adjustment to the income threshold for the low-income senior ad valorem tax exemption, which is approximately \$26,000.²⁵

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

CS by Judiciary on February 9, 2012:

The CS corrects the income threshold in the ballot summary for eligibility for the low-income senior ad valorem tax exemption.

B. Amendments:

None.

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

²⁴ Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).

²⁵ *Id.*



157764

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment

Delete line 217
and insert:
age or older and who has a household income of approximately
\$26,000 or less. The income threshold will change as a result of
inflation.

By Senator Diaz de la Portilla

36-00008A-12

2012838__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution to authorize counties and municipalities to limit the assessed value of the homesteads of certain low-income senior citizens.

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

That the following amendment to Section 4 of Article VII 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 VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for

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

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2012838__

taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 ~~of this Article~~ shall have their homestead assessed ~~at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only~~ as provided in this subsection.

(1) Except as provided in paragraph (2), assessments subject to this subsection shall change ~~be changed~~ annually on January 1 ~~1st~~ of each year; but those changes in assessments may ~~shall~~ not exceed the lower of the following:

a. Three percent ~~(3%)~~ of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or a successor index reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to limit assessments on homestead property subject to the additional homestead tax exemption under Section 6(d) to the assessed value of the property in the prior year if the just value of the property is equal to or less than one hundred fifty percent of the average just value of homestead property within the respective county or municipality. The general law must allow counties and municipalities to provide this limitation by ordinance adopted in the manner prescribed by general law, must specify the state agency designated to calculate the average

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

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 59 just value of homestead property within each county and
 60 municipality, and must provide that such agency annually supply
 61 that information to each property appraiser. The calculation
 62 shall be based on the prior year's tax roll of each county.

63 ~~(3)(2)~~ An ~~Ne~~ assessment may not ~~shall~~ exceed just value.

64 ~~(4)(3)~~ After a ~~any~~ change of ownership, as provided by
 65 general law, homestead property shall be assessed at just value
 66 as of January 1 of the following year, unless the provisions of
 67 paragraph ~~(9)~~ (9) ~~(8)~~ apply. Thereafter, the homestead shall be
 68 assessed as provided in this subsection.

69 ~~(5)(4)~~ New homestead property shall be assessed at just
 70 value as of January 1 ~~1st~~ of the year following the
 71 establishment of the homestead, unless the provisions of
 72 paragraph ~~(9)~~ (9) ~~(8)~~ apply. That assessment shall ~~only~~ change only
 73 as provided in this subsection.

74 ~~(6)(5)~~ Changes, additions, reductions, or improvements to
 75 homestead property shall be assessed as provided for by general
 76 law. ~~provided,~~ However, after the adjustment for any change,
 77 addition, reduction, or improvement, the property shall be
 78 assessed as provided in this subsection.

79 ~~(7)(6)~~ In the event of a termination of homestead status,
 80 the property shall be assessed as provided by general law.

81 ~~(8)(7)~~ The provisions of this subsection ~~amendment~~ are
 82 severable. If a provision ~~any of the provisions~~ of this
 83 subsection is ~~amendment shall be~~ held unconstitutional by a ~~any~~
 84 court of competent jurisdiction, the decision of the ~~such~~ court
 85 does ~~shall~~ not affect or impair any remaining provisions of this
 86 subsection ~~amendment~~.

87 ~~(9)(8)a.~~ A person who ~~establishes a new homestead as of~~

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 88 ~~January 1, 2009, or January 1 of any subsequent year and who has~~
 89 ~~received a homestead exemption pursuant to Section 6 of this~~
 90 ~~Article as of January 1 of either of the two years immediately~~
 91 ~~preceding the establishment of a the new homestead is entitled~~
 92 ~~to have the new homestead assessed at less than just value. If~~
 93 ~~this revision is approved in January of 2008, a person who~~
 94 ~~establishes a new homestead as of January 1, 2008, is entitled~~
 95 ~~to have the new homestead assessed at less than just value only~~
 96 ~~if that person received a homestead exemption on January 1,~~
 97 ~~2007. The assessed value of the newly established homestead~~
 98 ~~shall be determined as follows:~~

99 1. If the just value of the new homestead is greater than
 100 or equal to the just value of the prior homestead as of January
 101 1 of the year in which the prior homestead was abandoned, the
 102 assessed value of the new homestead shall be the just value of
 103 the new homestead minus an amount equal to the lesser of
 104 \$500,000 or the difference between the just value and the
 105 assessed value of the prior homestead as of January 1 of the
 106 year in which the prior homestead was abandoned. Thereafter, the
 107 homestead shall be assessed as provided in this subsection.

108 2. If the just value of the new homestead is less than the
 109 just value of the prior homestead as of January 1 of the year in
 110 which the prior homestead was abandoned, the assessed value of
 111 the new homestead shall be equal to the just value of the new
 112 homestead divided by the just value of the prior homestead and
 113 multiplied by the assessed value of the prior homestead.
 114 However, if the difference between the just value of the new
 115 homestead and the assessed value of the new homestead calculated
 116 pursuant to this sub-subparagraph is greater than \$500,000, the

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 117 assessed value of the new homestead shall be increased so that
 118 the difference between the just value and the assessed value
 119 equals \$500,000. Thereafter, the homestead shall be assessed as
 120 provided in this subsection.

121 b. By general law and subject to conditions specified
 122 therein, the Legislature shall provide for application of this
 123 paragraph to property owned by more than one person.

124 (e) The legislature may, by general law, for assessment
 125 purposes and subject to the provisions of this subsection, allow
 126 counties and municipalities to authorize by ordinance that
 127 historic property may be assessed solely on the basis of
 128 character or use. Such character or use assessment shall apply
 129 only to the jurisdiction adopting the ordinance. The
 130 requirements for eligible properties must be specified by
 131 general law.

132 (f) A county may, in the manner prescribed by general law,
 133 provide for a reduction in the assessed value of homestead
 134 property to the extent of any increase in the assessed value of
 135 that property which results from the construction or
 136 reconstruction of the property for the purpose of providing
 137 living quarters for one or more natural or adoptive grandparents
 138 or parents of the owner of the property or of the owner's spouse
 139 if at least one of the grandparents or parents for whom the
 140 living quarters are provided is 62 years of age or older. Such a
 141 reduction may not exceed the lesser of the following:

142 (1) The increase in assessed value resulting from
 143 construction or reconstruction of the property.

144 (2) Twenty percent of the total assessed value of the
 145 property as improved.

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 146 (g) For all levies other than school district levies,
 147 assessments of residential real property, as defined by general
 148 law, which contains nine units or fewer and which is not subject
 149 to the assessment limitations set forth in subsections (a)
 150 through (d) shall change only as provided in this subsection.

151 (1) Assessments subject to this subsection shall be changed
 152 annually on the date of assessment provided by law. However,
 153 ~~but~~ those changes in assessments may ~~shall~~ not exceed ten
 154 percent ~~(10%)~~ of the assessment for the prior year.

155 (2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

156 (3) After a change of ownership or control, as defined by
 157 general law, including any change of ownership of a legal entity
 158 that owns the property, such property shall be assessed at just
 159 value as of the next assessment date. Thereafter, such property
 160 shall be assessed as provided in this subsection.

161 (4) Changes, additions, reductions, or improvements to such
 162 property shall be assessed as provided for by general law. +
 163 However, after the adjustment for any change, addition,
 164 reduction, or improvement, the property shall be assessed as
 165 provided in this subsection.

166 (h) For all levies other than school district levies,
 167 assessments of real property that is not subject to the
 168 assessment limitations set forth in subsections (a) through (d)
 169 and (g) shall change only as provided in this subsection.

170 (1) Assessments subject to this subsection shall be changed
 171 annually on the date of assessment provided by law. However,
 172 ~~but~~ those changes in assessments may ~~shall~~ not exceed ten
 173 percent ~~(10%)~~ of the assessment for the prior year.

174 (2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

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175 (3) The legislature must provide that such property shall
176 be assessed at just value as of the next assessment date after a
177 qualifying improvement, as defined by general law, is made to
178 such property. Thereafter, such property shall be assessed as
179 provided in this subsection.

180 (4) The legislature may provide that such property shall be
181 assessed at just value as of the next assessment date after a
182 change of ownership or control, as defined by general law,
183 including any change of ownership of the legal entity that owns
184 the property. Thereafter, such property shall be assessed as
185 provided in this subsection.

186 (5) Changes, additions, reductions, or improvements to such
187 property shall be assessed as provided for by general law. ~~+~~
188 However, after the adjustment for any change, addition,
189 reduction, or improvement, the property shall be assessed as
190 provided in this subsection.

191 (i) The legislature, by general law and subject to
192 conditions specified therein, may prohibit the consideration of
193 the following in the determination of the assessed value of real
194 property used for residential purposes:

195 (1) Any change or improvement made for the purpose of
196 improving the property's resistance to wind damage.

197 (2) The installation of a renewable energy source device.

198 (j) (1) The assessment of the following working waterfront
199 properties shall be based upon the current use of the property:
200 a. Land used predominantly for commercial fishing purposes.
201 b. Land that is accessible to the public and used for
202 vessel launches into waters that are navigable.
203 c. Marinas and drystackes that are open to the public.

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204 d. Water-dependent marine manufacturing facilities,
205 commercial fishing facilities, and marine vessel construction
206 and repair facilities and their support activities.

207 (2) The assessment benefit provided by this subsection is
208 subject to conditions and limitations and reasonable definitions
209 as specified by the legislature by general law.

210 BE IT FURTHER RESOLVED that the following statement be
211 placed on the ballot:

212 CONSTITUTIONAL AMENDMENT

213 ARTICLE VII, SECTION 4

214 ASSESSMENT OF HOMESTEAD PROPERTY OWNED BY LOW-INCOME SENIOR
215 CITIZENS.—Currently, counties and municipalities may grant an
216 additional homestead exemption to a person who is 65 years of
217 age or older and who has a household income of \$20,000 or less.
218 This proposed amendment to the State Constitution authorizes
219 counties and municipalities to limit the assessments of the
220 homesteads of persons receiving such additional exemption to the
221 assessed value of the property in the prior year if the just
222 value of the property is equal to or less than 150 percent of
223 the average just value of homestead property in the respective
224 county or municipality. As such, if authorized by a county or
225 municipality, these individuals will not be required to pay more
226 county or municipal ad valorem taxes than they paid in the prior
227 year as the result of an increase in the value of their
228 homesteads.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 9 / 2012

Meeting Date

Topic _____

Bill Number 838
(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

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

2-9-12

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

Meeting Date

Topic _____

Bill Number 838
(if applicable)

Name JESS McCARTY

Amendment Barcode _____
(if applicable)

Job Title ASSIST COUNTY ATTY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street

MIAMI 33120

E-mail JMM2@MIAMI0006.GOV

City

State

Zip

Speaking: For Against Information

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 802

INTRODUCER: Judiciary Committee and Environmental Preservation and Conservation Committee

SUBJECT: Premises Liability

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	Favorable
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>BC</u>	_____
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 allows private property owners who provide outdoor recreational opportunities on their property to enter into written agreements with the state, as opposed to a formal lease, and still receive the benefit of the limitation of liability.

The bill also provides limitation of liability protection to private property owners who make their land available to specific persons, as opposed to only “the public,” for the purpose of hunting, fishing or wildlife viewing. To limit liability, the landowner must provide notice of the liability limits to the person or persons using the land and must not derive revenue from patronage of the property for outdoor recreational purposes.

This bill substantially amends section 375.251, Florida Statutes.

II. Present Situation:

Legal Duties for Landowners Towards Persons on Their Land

In a negligence action, to be entitled to certain remedies, a plaintiff must prove:

- a lawful duty exists;
- the duty was breached; and
- damages were suffered as a result of the breach.

Current tort law in Florida related to landowners' duty to persons on their land is governed by the status of the person and the duty of care owed by the landowner to the person.¹ There are two basic categories of persons on land, invitees and trespassers.

Generally, an invitee is a person who was invited to enter the land.² Section 768.075(3)(a)1., F.S., defines "invitation" to mean, "the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs." Landowners owe certain duties to invitees and can be sued in tort if an injury is caused by a breach of a duty. The duties owed to invitees are:

- to use reasonable care to keep and maintain property in reasonably safe condition; and
- to warn of concealed dangers that are known or should be known to the landowner and that the invitee cannot discover through the exercise of due care.³

A trespasser⁴ can either be a "discovered trespasser" or an "undiscovered trespasser." A discovered trespasser is a person who did not have an express or implied invitation and whose actual presence was discovered in the preceding 24 hours before an injury occurred.⁵ An undiscovered trespasser is a person whose actual presence was not discovered in the preceding 24 hours before an injury occurred.⁶ "An owner cannot, however, be held liable for a negligent condition as to an undiscovered trespasser who chooses to come upon his property without his knowledge."⁷ To avoid liability to an undiscovered trespasser, a property owner must not engage in intentional misconduct that causes the injury.⁸ The duty owed to a discovered trespasser is broader and includes:

- refraining from gross negligence or intentional misconduct that causes the injury; and
- warning the trespasser of hidden dangerous conditions.⁹

Current Law for Private Landowners or Lessees who Allow the Public on Their Land

Section 375.251, F.S., provides limited liability protection to private landowners who enter into "lease" agreements with the state to provide outdoor recreational activities on their land or who

¹ Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).

² *Id.* (citing *Wood v. Camp*, 284 So. 2d 691 (Fla. 1973) which expand[s] the definition of invitee to include social guests which the court referred to as 'licensees by invitation.' After *Wood*, invitees are defined as those persons who come on the property at the invitation of the landowner.").

³ Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).

⁴ "A trespasser is one who enters the owners (sic) property for his own convenience without right or authority." Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:4 Trespassers (2011-12 ed.).

⁵ Section 768.075 (3)(a)2., F.S.

⁶ Section 768.075(3)(a)3., F.S.

⁷ Sections 768.075(3)(a) and (b), F.S., *See also Wood*, 284 So. 2d at 693-694.

⁸ *Id.*

⁹ *Id.* *See also, Florida East Coast Ry. Co. v. Gonsiorowski*, 418 So. 2d 382, 384 (Fla. 4th DCA 1982).

otherwise provide recreational opportunities to the public. To take advantage of the limited liability protection afforded by statute, the property owner:

- cannot charge for entry to the property or conduct commercial or other activity where profit is derived from public patronage on any part of the property;¹⁰ or
- may lease¹¹ the property to the state for outdoor recreational purposes.¹²

“Outdoor recreational purposes” include, but are not limited to, “hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic or scientific sites.”¹³

Limitation of Liability for Private Landowners Who Enter Into Leases with the State

If private landowners enter into leases with the state to provide recreational opportunities on their land, they are provided with limited liability protection. If, however, the written agreements are anything other than a lease, the law is silent. For example, the Florida Fish and Wildlife Conservation Commission may enter into leases with private landowners for the purpose of facilitating scheduled hunts. The only purpose of the lessor/lessee relationship is to avail the private party of the liability protection provided by s. 375.251, F.S. This arrangement may create legal obligations and rights that exceed what is necessary to accomplish the specific goal of offering hunts to the public.

The Florida Fish and Wildlife Conservation Commission wants to provide outdoor recreational activities on privately owned lands that would not require the degree of legal control and complexity of a lease. In some instances use or management agreements, contracts for services or easements may be more appropriate arrangements between private landowners and the state.¹⁴ When a landowner enters into a lease with the state, the landowner gives the state a possessory interest in the property. Other contractual arrangements may transfer fewer rights to the state and do not give the state a possessory interest in the land. For instance, if a landowner grants the state an easement to a property, the state has a limited right to use the property for a specific purpose.

An easement is an incorporeal, nonpossessory interest in land which concerns the use of the land of another. An easement is not an estate in land and does not convey title to land or dispossess the owner of the land subject to the easement. Instead, an easement only grants the right to use the property for some particular purpose or purposes.¹⁵

¹⁰ Section 375.251(2), F.S.

¹¹ “Lease” means “a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent. • The lease term can be for life, for a fixed period, or for a period terminable at will.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹² Section 375.251(3), F.S.

¹³ Section 375.251(5), F.S.

¹⁴ An easement is “[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹⁵ *Sears, Roebuck and Co. v. Franchise Finance Corp. of America*, 711 So.2d 1189, 1191 (2d DCA 1998).

The state would only exercise as much control over the property as is necessary to use the easement for the intended purpose. This is a more limited *nonpossessory* interest in the land. The Florida Fish and Wildlife Conservation Commission indicates the state may also benefit from alternative types of written arrangements because the parties will not be subject to landlord/tenant law, which creates certain obligations on both the landowner and the state.¹⁶

Private Landowners Who Allow the Public to Use Their Land for Recreational Activities

Under current law, private landowners who make their land available to the public for outdoor recreational activities are also afforded limited liability protection. This protection does not apply for individuals or groups of individuals.¹⁷ For example, if landowners allow troops of Boy Scouts on their land but do not want anyone else in the general public to have the same access, they are not afforded any limitation on liability protection.

According to the FWC, Georgia, Alabama, Louisiana and South Carolina all provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes.¹⁸

Sovereign Immunity

The term “sovereign immunity” originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.¹⁹

Instead, the state steps in as the party litigant and defends against the claim. Section 768.28(5), F.S., limits the recovery of any one person to \$200,000 for one incident and limits all recovery related to one incident to a total of \$300,000.²⁰ Parties may pursue a claim bill with the

¹⁶ Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).

¹⁷ Section 375.251(2), F.S.

¹⁸ Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).

¹⁹ Section 768.28(9)(a), F.S.

²⁰ Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S., to increase the limits to \$200,000 for one person for one incident and \$300,000 for all recovery related to one incident, to apply to claims arising on or after the law’s effective date of October 1, 2011.

Legislature for any excess judgment or equitable claim that is not recovered from a state agency or other entity covered by the waiver of sovereign immunity.²¹

III. Effect of Proposed Changes:

This bill specifies ways a private property owner may limit his or her liability to persons allowed onto the property for outdoor recreational purposes.

Hunting, Fishing, Wildlife Viewing

Under the bill, a property owner may limit his or her liability to a person allowed on the property for hunting, fishing, or wildlife viewing if the property owner:

- notifies (via written notice or conspicuously posts a notice on the area) the person upon entry to the land that the property owner's liability is limited under state law; and
- does not impose a charge or derive revenue from patronage of the property for outdoor recreational purposes.

This provision does not require a property owner to provide access to the property to the general public in order to receive the benefit of the limitation on liability.

Outdoor Recreational Purposes/Agreements with the State

Under the bill, a property owner's may limit his or her liability to a person allowed on the property for outdoor recreational purposes if the property owner enters into a written agreement with the state concerning the property for the benefit of the public. The agreement must recognize that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, F.S.

The bill provides legislative intent that such agreements between the owner of the area and the state compensate the owner only for reasonable costs and expenses as provided in the agreement. However, an owner of the area and the state are not subject to liability if the compensation identified in the agreement exceeds the costs and expenses.

Existing law requires the property owner to enter a lease with the state to receive the benefit of the liability limitation. This change will enable the state to execute a written agreement with a private property owner to expand outdoor recreational activities without taking a leasehold interest in the property where the activities are conducted. This may simplify the legal arrangement and provide better protection for a private property owner should a lawsuit arise.

Effective Date

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

²¹ Section 768.28(5), F.S. (provides that any portion of a judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature).

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

Article 1, section 21 of the Florida Constitution addresses access to the courts. It states, “[t]he courts shall be open to every person for redress of any injury.” Tort limitations may implicate judicial review under this section of the Florida Constitution; however, the Florida Supreme Court has held that the current statute does not deny access to courts.²²

The Florida Supreme Court in “*Kluger v. White*” announced a test that the Legislature must meet when it abolishes a common law or statutory right of redress. But [the Supreme Court] also noted the distinction between abolishing a cause of action and merely changing a standard of care.”²³

In *Iglesia v. Floran*²⁴ the Court held that although a 1978 amendment to a workers’ compensation statute²⁵ precluded liability for simple negligence, the statute did not implicate the access to courts provision in the State Constitution.²⁶

The Florida Supreme Court has repeatedly held that a statute that merely alters the standard of care owed by one party to another or increases the degree of negligence necessary to maintain a successful tort action does not abolish a preexisting right of access and does not, therefore, implicate Article I, Section 21 of the State Constitution. In *Abdin v. Fischer*, the Court upheld a statute that exempted property owners from liability

²² See *Abdin v. Fischer*, 374 So. 2d 1379 (1979) (holding that s. 375.251, F.S., limiting liability of owners and lessees who provide the public with a park area for outdoor recreational purposes, is a reasonable exercise of legislative power and does not violate Art. 1, s. 21, FLA. CONST., regarding access to courts).

²³ *Id.* at 1380-1381 (citing *Kluger v. White*, 281 So. 2d 1 (Fla. 1973)).

²⁴ *Iglesia v. Floran*, 394 So. 2d 994 (Fla. 1981).

²⁵ Section 440.11(1), F.S., as amended by s. 2 of ch. 78-300, Laws of Florida, “grants immunity from tort liability to co-employees who, while in the course of their employment, negligently injure other employees of the same employer, unless the employees act with willful and wanton disregard or unprovoked physical aggression or with gross negligence.” (cited in *Iglesia*, 394 So. 2d at 995).

²⁶ *Iglesia*, 394 So. 2d at 995-96 (citing *McMillan v. Nelson*, 5 So. 2d 867 (Fla. 1942)). The Court described its rationale that “[s]ection 440.11[(1), F.S., as amended] still provides a cause of action for gross negligence just as the court-sustained ‘guest statute’ did. The Florida Legislature has broad powers in enacting legislation. The acts that it passes are to be sustained unless they run afoul of a limitation placed upon them by the Florida Constitution or violate a provision of the United States Constitution.”

for injuries occurring on private property set aside for public recreation, unless the owner inflicted “deliberate, willful, or malicious injury to persons or property.”²⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is the potential for a positive fiscal impact on private sector landowners in the form of reduced litigation and liability. Conversely, the bill will limit legal remedies available to a person who is injured on private land.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 9, 2012:

The committee substitute outlines the manner in which a property owner must notify persons that the owner’s liability is limited under state law. The committee substitute requires the state to assume liability for personal injuries resulting from the state’s use of an area as a concurrent condition to limiting the landowner’s liability.

B. Amendments:

None.

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

²⁷ *Abdin v. Fischer*, 374 So. 2d 1379, 1380-81 (Fla. 1979) (holding that to the extent the “statute alters the standard of care owed to plaintiff by defendants, this type of modification by the legislature is not prohibited by the constitution.” The Florida Supreme Court noted in *Kluger* that there is a “distinction between abolishing a cause of action and merely changing a standard of care.”).



181882

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 51 - 53
and insert:
limitation on liability provided in this subsection so long as
the owner or lessee provides written notice of the limitation on
liability to the person before or at the time of the person's
entry on the area or posts notice of the limitation of liability
conspicuously on the area.

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

And the title is amended as follows:

Delete lines 6 - 7



14 and insert:
15 limitations on liability if notice is provided to a
16 person upon entry to the area or is posted
17 conspicuously on the area; providing that an owner



370198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Delete lines 68 - 72
and insert:
for outdoor recreational purposes where such agreement
recognizes that the state is responsible for personal injury,
loss, or damage resulting in whole or in part from the state's
use of the area under the terms of the agreement subject to the
limitations and conditions specified in s. 768.28 owes no duty
of care to keep that ~~land or water~~ area safe for entry or use by
others, or to give warning to persons entering or going on that
area ~~land or water~~ of any hazardous conditions, structures, or
activities thereon. An owner who enters into such a written



370198

14

agreement concerning



731032

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Delete line 74
and insert:
recreational purposes, if the agreement recognizes that the
state may be responsible for personal injury or loss of property
resulting from negligence or wrongful acts or omissions of the
state to the extent authorized under s. 768.28 ~~shall not by
giving such lease:~~



632662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment

Between lines 88 and 89
insert:

(c) It is the intent of the Legislature that agreements pursuant to this subsection between the owner of the area and the state compensate the owner only for reasonable costs and expenses as provided in the agreement. However, an owner of the area and the state are not subject to liability if the compensation identified in the agreement exceeds the costs and expenses. This paragraph applies only to agreements executed on or after July 1, 2012.

By the Committee on Environmental Preservation and Conservation

592-00701-12

2012802__

A bill to be entitled

An act relating to premises liability; amending s.

375.251, F.S.; providing that an owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to a person upon entry to the area; providing that an owner of an area who enters into a written agreement with the state for the area to be used for outdoor recreational purposes is entitled to certain limitations on liability; deleting a requirement that the area be leased to the state in order for the limitations on liability to apply; defining the term "area"; making technical and grammatical changes; providing an effective date.

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

Section 1. Section 375.251, Florida Statutes, is amended to read:

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this section act is to encourage persons to make land, water areas, and park areas available to the public ~~land, water areas and park areas~~ for outdoor recreational purposes by limiting their liability to persons using these areas going thereon and to third persons who may be damaged by the acts or omissions of persons using these areas going

592-00701-12

2012802__

~~thereon.~~

(2) (a) An owner or lessee who provides the public with an a ~~park area or other land~~ for outdoor recreational purposes owes no duty of care to keep that ~~park area or land~~ safe for entry or use by others, or to give warning to persons entering or going on that ~~park area or land~~ of any hazardous conditions, structures, or activities on the area thereon. An owner or lessee who provides the public with an a ~~park area or other land~~ for outdoor recreational purposes ~~shall not by providing that~~ ~~park area or land~~:

1. Is not be presumed to extend any assurance that the such ~~park area or land~~ is safe for any purpose;~~;~~

2. Does not incur any duty of care toward a person who goes on ~~that park area or land;~~ or

3. Is not ~~Become~~ liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that ~~park area or land~~.

(b) Notwithstanding the inclusion of the term "public" in this subsection and subsection (1), an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation on liability provided herein so long as the owner or lessee gives notice of this provision to the person upon entry to the area.

(c) ~~(b)~~ The Legislature recognizes that an area offered for outdoor recreational purposes may be subject to multiple uses. The limitation of liability extended to an owner or lessee under this subsection applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no

592-00701-12 2012802__

59 ~~other revenue is derived from patronage of the area for outdoor~~
 60 ~~recreational purposes. This section shall not apply if there is~~
 61 ~~any charge made or usually made for entering or using such park~~
 62 ~~area or land, or any part thereof, or if any commercial or other~~
 63 ~~activity, whereby profit is derived from the patronage of the~~
 64 ~~general public, is conducted on such park area or land, or any~~
 65 ~~part thereof.~~

66 (3) (a) An owner of an land or water area who enters into a
 67 written agreement concerning the area with leased to the state
 68 for outdoor recreational purposes owes no duty of care to keep
 69 that ~~land or water~~ area safe for entry or use by others, or to
 70 give warning to persons entering or going on that area land or
 71 water of any hazardous conditions, structures, or activities
 72 thereon. An owner who enters into a written agreement concerning
 73 the area with leases land or water area to the state for outdoor
 74 recreational purposes ~~shall not by giving such lease:~~

75 1. Is not ~~be~~ presumed to extend any assurance that the such
 76 land or water area is safe for any purpose;

77 2. Does not incur any duty of care toward a person who goes
 78 on the ~~leased land or water~~ area that is subject to the
 79 agreement; or

80 3. Is not ~~become~~ liable or responsible for any injury to
 81 persons or property caused by the act or omission of a person
 82 who goes on the ~~leased land or water~~ area that is subject to the
 83 agreement.

84 (b) This subsection applies to all persons going on the
 85 area that is subject to the agreement, including invitees,
 86 licensees, and trespassers. The foregoing applies whether the
 87 person going on the leased land or water area is an invitee,

592-00701-12 2012802__

88 ~~licensee, trespasser, or otherwise.~~

89 (4) This section act does not relieve any person of
 90 liability that ~~which~~ would otherwise exist for deliberate,
 91 willful, or malicious injury to persons or property. This
 92 section does not ~~The provisions hereof shall not be deemed to~~
 93 create or increase the liability of any person.

94 (5) As used in this section, the term:

95 (a) "Area" includes land, water, and park areas.

96 (b) "Outdoor recreational purposes" includes as used in
 97 this act shall include, but is not necessarily be limited to,
 98 hunting, fishing, wildlife viewing, swimming, boating, camping,
 99 picnicking, hiking, pleasure driving, nature study, water
 100 skiing, motorcycling, and visiting historical, archaeological,
 101 scenic, or scientific sites.

102 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)

2 1 9 12012

Meeting Date

Topic _____

Bill Number 802

(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

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-12

Meeting Date

Topic Premise liability

Bill Number 802
(if applicable)

Name Lane Stephens

Amendment Barcode _____
(if applicable)

Job Title _____

Address 201 S. Monroe St.
Street

Phone 917-3007

Quincy FL 01
City State Zip

E-mail _____

Speaking: For Against Information

Representing Future of Hunting in Florida, 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.

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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)

2/9/2012
Meeting Date

Topic Premises Liability

Bill Number SB 802
(if applicable)

Name Brandy Elliott

Amendment Barcode _____
(if applicable)

Job Title Legislative Liaison

Address 1020 S. Mendenhall Street
Street

Phone (850) 487-3795

Tallahassee FL 32399
City State Zip

E-mail brandy.elliott@myfwc.com

Speaking: For Against Information

Representing Fish + Wildlife Conservation Commission

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

9 FEB

Meeting Date

Topic _____

Bill Number 802
(if applicable)

Name PAUL JESS

Amendment Barcode 370198
(if applicable)

Job Title GEN COUNSEL

Address 218 S. MONROE ST

Phone 850 224-9403

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing amendment FLORIDA JUSTICE 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
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/CS/SB 1404

INTRODUCER: Judiciary Committee, Banking and Insurance Committee, and Senator Altman

SUBJECT: Title Insurance

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Irwin</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>BC</u>	_____
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:

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. In Florida, two entities provide regulatory oversight of the title insurance industry, the Department of Financial Services (DFS), which regulates title agents and agencies, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage¹ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).²

The Committee Substitute (CS) makes the following changes with regard to title insurance agents and agencies:

- Changes to the continuing educational requirements for agents.
- Allows DFS to deny the renewal of licensure for failure to timely report data.
- Requires attorneys to maintain separate trust accounts for title transactions.
- Requires OIR to approve forms within certain time period from when they are submitted.

¹ Section 627.777, F.S.

² Section 627.782(1), F.S.

- Requires title agents and agencies to maintain and submit records to OIR.

This bill substantially amends the following sections of the Florida Statutes: 626.2815, 626.8437, 626.8473, 627.777, and 627.782.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.³ Title insurance is a policy issued by a title insurer⁴ that, after performing a search of title, represents the disposition of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and an obligation to indemnify the policyholder for damage to the lender's security interest created by a cloud on the title, unmarketable title, or adverse title that was not discovered by the insurer.

Title Insurance Agencies and Agents

Title insurance agencies must apply for and be licensed by DFS, and are separately appointed by each title insurer they represent.⁵ To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by DFS.⁶ The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees.⁷ In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling.⁸ Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee.⁹ Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years.¹⁰

³ Section 624.608(1), F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code. *See* Section 626.608(2), F.S.

⁴ Section 627.7711(3), F.S.

⁵ *See* Section 626.172(1), F.S. (stating DFS licenses title insurance agencies); Section 626.015(3), F.S., (defining an appointment as the authority given by an insurer to a licensee to transact insurance on its behalf).

⁶ Section 626.221(1), F.S.

⁷ Section 626.241(1), F.S.

⁸ Section 626.241(7), F.S.

⁹ Section 626.8417(3)(a), F.S.

¹⁰ Section 626.2815(3)(d), F.S.

III. Effect of Proposed Changes:**Continuing Education**

The CS does not change the number of hours (10) a licensed agent must complete every two years, but it does require DFS to approve 10 hours of courses specific to title insurance and escrow management. Additionally 3 of the 10 hours of courses approved by DFS must be about ethics, rules, or compliance with state and federal regulations pertaining to title insurance and closing services.

Submission of Data

The CS requires each title insurance agency doing business in this state to maintain and submit to OIR by March 31 of each year, information OIR may determine necessary to assist in the analysis of title insurance rates, title search costs and the condition of the title insurance industry in this state. The CS also allows DFS to suspend or revoke a license for failure to timely report data as requested by OIR.

Attorneys

The CS requires attorneys acting in the capacity of a title insurance agent to keep in a separate trust account all escrowed funds collected from title insurance transactions, these accounts are to be made available for audit by the insurer unless particular accounts for certain clients would violate applicable rules of The Florida Bar.

Title Insurance Forms

The Office of Insurance Regulation is required to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations.

This act shall take effect 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:

Licenses may face revocation for failure to timely submit data to OIR.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The bill requires the Office of Insurance Regulation to approve or disapprove a form filed for approval within 180 days after receipt. The agency, however, does not appear to be subject to a consequence if it fails to act within the allotted time. Under s. 120.60(1), F.S., for example, an application for a license is deemed approved if a state agency fails to approve or deny an application within a statutorily prescribed time. Similarly, the Legislature may wish to consider whether a form should be deemed approved if OIR fails to act on the form within 180 days after receipt.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on February 9, 2012:

The CS increases from 3 hours from 1.5 hours the number of hours of continuing education which a title insurance agent must complete on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

Additionally, the CS deletes a provision that would have exempted a title insurance agency or title agent from sanctions for failing to timely submit certain data to the Financial Services Commission (FSC) if the data had been submitted and the agent or agency filed a challenge to the rule specifying the form or substance of the data required.

The CS also expands the rulemaking authority of FSC by enabling the commission to adopt rules “relating to” the collection and analysis of data, rather than rules “to assist in” the collection and analysis of data.

CS by Banking and Insurance on January 26, 2012:

The CS changed the continuing educational requirements from 3 hours to 1.5 hours pertaining to ethics, rules and compliance with state and federal regulations of title services.

The CS corrected an error in the originally filed bill that mistakenly referred to the “department” (DFS) and not the “office” (OIR).

The CS also removed the following provisions from the original filed bill:

- The definition of agent in charge and the outline of relevant responsibilities.
- The section regarding applicant no longer having to deposit securities.
- An increase in fidelity bonding that an agency must maintain.
- The authority of DFS to deny the renewal of licensure for certain offenses.
- The process for labeling submitted documents as trade secrets.
- A statement of settlement cost be required before funds can be dispersed.

B. Amendments:

None.



514586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment

Delete lines 41 - 48
and insert:

(1) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education courses every 2 years in title insurance and escrow management specific to this state and approved by the department, which must include at least 3 hours on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.



153144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment

Delete lines 59 - 61
and insert:

(11) Failure to timely submit data as required by s.
627.782.



539680

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment

Delete line 108
and insert:
relating to the collection and analysis of the data from the

By the Committee on Banking and Insurance; and Senator Altman

597-02426-12

20121404c1

1 A bill to be entitled
 2 An act relating to title insurance; amending s.
 3 626.2815, F.S.; specifying continuing education
 4 requirements for title insurance agents; amending s.
 5 626.8437, F.S.; specifying additional grounds to deny,
 6 suspend, revoke, or refuse to renew or continue the
 7 license or appointment of a title insurance agent or
 8 agency; amending s. 626.8473, F.S.; requiring an
 9 attorney serving as a title or real estate settlement
 10 agent to deposit and maintain certain funds in a
 11 separate trust account and permit the account to be
 12 audited by the applicable title insurer, unless
 13 prohibited by the rules of The Florida Bar; amending
 14 s. 627.777, F.S.; providing procedures and
 15 requirements relating to the approval or disapproval
 16 of title insurance forms by the Office of Insurance
 17 Regulation; amending s. 627.782, F.S.; requiring title
 18 insurance agencies and certain insurers to submit
 19 specified information to the office to assist in the
 20 analysis of title insurance premium rates, title
 21 search costs, and the condition of the title insurance
 22 industry; requiring the Financial Services Commission
 23 to adopt rules; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Paragraph (d) of subsection (3) of section
 28 626.2815, Florida Statutes, is amended, and paragraph (1) is
 29 added to that subsection, to read:

Page 1 of 4

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

597-02426-12

20121404c1

30 626.2815 Continuing education required; application;
 31 exceptions; requirements; penalties.-
 32 (3)
 33 (d) Any person who holds a license as a customer
 34 representative, limited customer representative, ~~title agent,~~
 35 motor vehicle physical damage and mechanical breakdown insurance
 36 agent, crop or hail and multiple-peril crop insurance agent, or
 37 as an industrial fire insurance or burglary insurance agent and
 38 who is not a licensed life or health insurance agent, must ~~shall~~
 39 ~~be required to~~ complete 10 hours of continuing education courses
 40 every 2 years.
 41 (1) Any person who holds a license as a title insurance
 42 agent must complete a minimum of 10 hours of continuing
 43 education courses every 2 years in title insurance and escrow
 44 management specific to this state and approved by the
 45 department, which shall include at least 1.5 hours of continuing
 46 education on the subject matter of ethics, rules, or compliance
 47 with state and federal regulations relating to title insurance
 48 and closing services.
 49 Section 2. Subsection (11) is added to section 626.8437,
 50 Florida Statutes, to read:
 51 626.8437 Grounds for denial, suspension, revocation, or
 52 refusal to renew license or appointment.-The department shall
 53 deny, suspend, revoke, or refuse to renew or continue the
 54 license or appointment of any title insurance agent or agency,
 55 and it shall suspend or revoke the eligibility to hold a license
 56 or appointment of such person, if it finds that as to the
 57 applicant, licensee, appointee, or any principal thereof, any
 58 one or more of the following grounds exist:

Page 2 of 4

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

597-02426-12 20121404c1

59 (11) Failure to timely submit data as required by s.
 60 627.782, unless a rule challenge has been filed pursuant to s.
 61 120.56 as to the form or substance of data to be provided.

62 Section 3. Subsection (8) is added to section 626.8473,
 63 Florida Statutes, to read:

64 626.8473 Escrow; trust fund.—

65 (8) An attorney shall deposit and maintain all funds
 66 received in connection with transactions in which the attorney
 67 is serving as a title or real estate settlement agent into a
 68 separate trust account that is maintained exclusively for funds
 69 received in connection with such transactions and permit the
 70 account to be audited by its title insurers, unless maintaining
 71 funds in the separate account for a particular client would
 72 violate applicable rules of The Florida Bar.

73 Section 4. Section 627.777, Florida Statutes, is amended to
 74 read:

75 627.777 Approval of forms.—

76 (1) A title insurer may not issue or agree to issue any
 77 form of title insurance commitment, title insurance policy,
 78 other contract of title insurance, or related form until it is
 79 filed with and approved by the office. The office may not
 80 disapprove a title guarantee or policy form on the ground that
 81 it has on it a blank form for an attorney's opinion on the
 82 title.

83 (2) The office shall approve or disapprove a form filed for
 84 approval within 180 days after receipt.

85 (3) When the office approves any form, it shall determine
 86 if the current rate in effect applies or if the coverages
 87 require the adoption of a rule pursuant to s. 627.782.

597-02426-12 20121404c1

88 (4) The office may revoke approval of any form after
 89 providing 180 days' notice to the title insurer.

90 (5) An insurer may not achieve a competitive advantage over
 91 any other insurer, agency, or agent as to rates or forms. If a
 92 form or rate is approved for an insurer, the office shall
 93 expeditiously approve the forms of other insurers who apply for
 94 approval if those forms contain identical coverages, rates, and
 95 deviations which have been approved under s. 627.783.

96 Section 5. Subsection (8) of section 627.782, Florida
 97 Statutes, is amended to read:

98 627.782 Adoption of rates.—

99 (8) Each title insurance agency and insurer licensed to do
 100 business in this state and each insurer's direct or retail
 101 business in this state shall maintain and submit information,
 102 including revenue, loss, and expense data, as the office
 103 determines necessary to assist in the analysis of title
 104 insurance premium rates, title search costs, and the condition
 105 of the title insurance industry in this state. This information
 106 must be transmitted to the office annually by March 31 of the
 107 year after the reporting year. The commission shall adopt rules
 108 to assist in the collection and analysis of the data from the
 109 title insurance industry. ~~The commission may, by rule, require~~
 110 ~~licensees under this part to annually submit statistical~~
 111 ~~information, including loss and expense data, as the department~~
 112 ~~determines to be necessary to analyze premium rates, retention~~
 113 ~~rates, and the condition of the title insurance industry.~~

114 Section 6. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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219/2012

Meeting Date

Topic _____

Bill Number 1404

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

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E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1662

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Homeless Youth

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	O'Connor	Cibula	JU	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill provides a mechanism for a homeless minor to become a “certified homeless youth,” and, if the minor is 16 years of age or older, petition a court for removal of the disabilities of nonage. The bill also allows the minor to avoid having to prepay court costs and fees when filing the petition. Lastly, the bill allows a certified homeless youth or a minor who has had the disabilities of nonage removed through marriage or by a judicial process to obtain his or her birth certificate.

The bill substantially amends the following sections of the Florida Statutes: 382.002, 382.0085, and 382.025.

The bill creates section 743.067, Florida Statutes.

II. Present Situation:

Background

*Homeless Children*¹

Although the causes for homelessness among children vary, the underlying themes among these causes reveal a strong link between homelessness and broader social issues including family breakdown and systems failure.

- **Family Breakdown.** The same factors that contribute to adult homelessness such as poverty, lack of affordable housing, low education levels, unemployment, mental health, and substance abuse issues can also play a role in the occurrence and duration of a child's homelessness. Beyond those factors, the phenomenon of child homelessness is largely a reflection of family dysfunction and breakdown, specifically familial conflict, abuse, and disruption. Children typically enter a state of homelessness as a result of:
 - Running away from home;
 - Being locked out or abandoned by their parents or guardians; or
 - Running from or being emancipated or discharged from institutional or other state care.^{2,3}
- **Systems Failure.** In addition, many children become homeless due to systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs. Every year between 20,000 and 25,000 children ages 16 and older transition from foster care to legal emancipation, or "age out" of the system. They enter into society with few resources and numerous challenges. As a result, former foster care children are disproportionately represented in the homeless population. Twenty-five percent of former foster children nationwide reported that they had been homeless at least one night within 30 to 48 months after exiting foster care.⁴

Many children encounter the juvenile justice system while homeless. Without a home, family support, or other resources, homeless children are often incarcerated because they are without supervision. Homeless children are socially marginalized and often arrested for "status" offenses—an action that is only illegal when performed by minors, like running away or breaking curfew. For children who are released from juvenile corrections facilities, reentry is often difficult because they lack the familial support systems and opportunities for work and housing. Additionally, homeless children are more likely than the general child population to become involved in the juvenile justice system.⁵

¹ A substantial portion of this section was taken from: *Fundamental Issues to Prevent and End Youth Homelessness*, Youth Homelessness Series, Brief No. 1, National Alliance to End Homelessness. May, 2006. Retrieved Jan. 25, 2012, from <http://www.endhomelessness.org/content/general/detail/1058>.

² *Fundamental Issues*, *supra* note 1 at 1.

³ Although family conflict also plays a part in adult homelessness, the nexus is more critical for youth since they are, by virtue of their developmental stage in life, still largely financially, emotionally, and, depending on their age, legally dependent upon their families.

⁴ *Fundamental Issues*, *supra* note 1 at 1-2.

⁵ *Id.*

According to the National Alliance to End Homelessness, the prevalence of child homelessness is difficult to measure. Researchers estimate that about 1.6 million children, aged 13-17, are homeless in the United States.⁶ Florida has the third largest homeless population in the country, with roughly 60,000 people facing homelessness daily.⁷ During the 2010-2011 school year 56,680 school-aged children were identified as homeless in the state.⁸ Of those, 6,503 were categorized as unaccompanied.⁹

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (act)¹⁰ was the first significant federal legislative response to homelessness, and was passed and signed into law by President Ronald Reagan in 1987. The act has been reauthorized several times subsequently. The act originally consisted of 15 programs providing a range of services to the homeless, including emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing. The act contains nine titles. Title VII of the act authorizes four programs, including the Adult Education for the Homeless and the Education of Homeless Children and Youth Programs administered by the U.S. Department of Education.¹¹

Definition of Homeless Children and Youth

Federal law provides a definition for the term “homeless children and youths.” The term means¹² individuals who lack a fixed, regular, and adequate nighttime residence. The term also includes:

- Children and youths who are: sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; abandoned in hospitals; or awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who are living in circumstances described above.

The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.¹³ Florida law in s. 1003.01(12), F.S., defines the term “children and youths who are experiencing homelessness” to have the same meaning as “homeless children and youths” under federal law.

⁶ Paul A. Toro, et. Al., *The Heterogeneity of Homeless Youth in America: Examining Typologies*, National Alliance to End Homelessness. Sept. 2011, 1. Retrieved Jan. 26, 2012, from <http://www.endhomelessness.org/content/article/detail/4247/>.

⁷ Florida Department of Children and Families. *Council on Homelessness Annual Report 2011*, ii, Retrieved Jan. 25, 2012, from <http://www.dcf.state.fl.us/programs/homelessness/council/index.shtml>.

⁸ Department of Education, Bureau of Federal Educational Programs, *2010-2011 Final Survey Homeless Counts*. As of Sept. 26, 2011. Retrieved Jan. 27, 2012, from <http://www.fldoe.org/bsa/title1/pdf/1011HomelessStudentsCount.pdf>.

⁹ *Id.*

¹⁰ Pub. L. 100-77, Jul. 22, 1987, 101 Stat. 482; 42 U.S.C. s. 11301 et seq.

¹¹ *Id.*

¹² 42 U.S.C. s. 11434a.

¹³ *Id.*

School District Homeless Liaison

The reauthorization of the McKinney-Vento Act requires school districts to designate a liaison for homeless children and youth.¹⁴ The Florida Department of Education (DOE) has established at least one “school district homeless liaison” for each of the 67 counties.¹⁵ The liaison must ensure:¹⁶

- Homeless children and youth, including unaccompanied youth, are identified by school personnel and through coordinated activities with other entities and agencies;
- Homeless children and youth enroll in, and have a full and equal opportunity to succeed in, schools of that local education agency (LEA);
- Homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start, Even Start, and other preschool programs administered by the LEA, and referrals to health care services, dental services, mental health services, and other appropriate services;
- The parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens;
- Enrollment disputes are mediated;
- The parents or guardians of homeless students, or any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of origin or the school which serves the location where the students currently reside.

The local homeless liaison is also required to coordinate and collaborate with the state Homeless Education Coordinator and community and school personnel responsible for providing education and related services to homeless students.

Emergency Shelter Programs funded by U.S. Department of Housing and Urban Development

The emergency shelter programs funded by the Department of Housing and Urban Development are designed as the first step in the Continuum of Care (CoC).¹⁷ The Emergency Shelter Grants

¹⁴ Florida Department of Education, *The Education of Homeless Children and Youth (Title X, No Child Left Behind Act of 2001, The McKinney Vento Act)*, Retrieved Jan. 27, 2012, from http://www.fldoe.org/bsa/title1/pdf/homeless_tap_08_23_051.pdf.

¹⁵ Florida Department of Education, *District Liaison List*, Retrieved Jan. 28, 2012, from <https://app1.fldoe.org/flbpso/nclbchoice/bpsDirectory/directory.aspx>.

¹⁶ Florida Department of Education, *Technical Assistance Paper. Coordination of Title I, Part A Improving Basic Programs Operated by Local Educational Agencies, and Title X, Part C, McKinney-Vento Homeless Education Assistance Improvements Act of 2001 Education for Homeless Children and Youth Program*, Dec. 15, 2009, 5, Retrieved Jan. 28, 2012, from <http://info.fldoe.org/docushare/dsweb/Get/Document-5625/dps-2009-169.pdf>.

¹⁷ According to HUD, a CoC is “a community plan to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.” HUD identifies four necessary parts of a continuum:

Program provides funds for emergency shelters as immediate alternatives to the street and transitional housing that helps people reach independent living. States use grant funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness.¹⁸ The providers of service must document in their files that the child being served meets the federal definition of a homeless person.¹⁹

Runaway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Youth Center Programs work to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families. The programs provide youth up to age 18 with emergency shelter, food, clothing, counseling and referrals for health care. Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements. The providers of service must maintain individual case files on the youth that are in the program.²⁰

The Transitional Living Programs provide homeless youth with stable, safe living accommodations for up to 18 months. The programs provide services to help young people develop skills necessary to move to independence and life as healthy, productive adults. These services are provided through more than 191 community-based residential centers. The program also helps homeless youth improve basic life and interpersonal skills, provides educational opportunities, assists with job preparation and attainment, and ensures that physical and mental health care needs are met. The providers of service must maintain individual case files on the youth who are in the program.²¹

Birth Certificates

The Florida Department of Health (DOH), Office of Vital Statistics, maintains all vital records for the state. Under current law, homeless children are not specifically given the ability to obtain their birth certificates. Florida law provides that certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1), F.S., and, upon receipt of a request and payment of the fee prescribed

Outreach, intake, and assessment in order to identify service and housing needs and provide a link to the appropriate level of both; Emergency shelter to provide an immediate and safe alternative to sleeping on the streets, especially for homeless families with children; Transitional housing with supportive services to allow for the development of skills that will be needed once permanently housed; and Permanent and permanent supportive housing to provide individuals and families with an affordable place to live with services if needed. National Alliance to End Homelessness, *Questions and Answers on Homelessness Policy Research*, Retrieved Jan. 29, 2012, from <http://www.endhomelessness.org/content/article/detail/1744>.

¹⁸ U.S. Department of Housing and Homeless Development, *Homelessness Resource Exchange*, Retrieved Jan. 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgProgram>.

¹⁹ U.S. Department of Housing and Homeless Development, *Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities*, Retrieved Jan. 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgDeskguideSec4#4-4>.

²⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *Fact Sheet Basic Center Program*, Retrieved Jan. 28, 2012, from <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

²¹ U.S. Department of Health and Human Services, *Transitional Living Program for Homeless Youth*, Retrieved Jan. 28, 2012, from <http://www.benefits.gov/benefits/benefit-details/619>. See also U.S. Department of Health and Human Services, Administration for Children and Families, *Fact Sheet Transitional Program*, <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

in s. 382.0255, F.S., shall be issued only as authorized by the department and in the form prescribed by the department, and only:

- To the registrant, if of legal age;
- To the registrant's parent or guardian or other legal representative;
- Upon receipt of the registrant's death certificate, to the registrant's spouse or to the registrant's child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;
- To any person if the birth record is over 100 years old and not under seal pursuant to court order;
- To a law enforcement agency for official purposes;
- To any agency of the state or the United States for official purposes upon approval of the department; or
- Upon order of any court of competent jurisdiction.²²

Therefore, homeless children not of legal age and without a parent, guardian or other legal representative are not able to obtain their birth certificates.

Disabilities of Nonage – Emancipation

All states have laws dealing with the “emancipation” of minors, which are laws that specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.²³

Emancipation is the removal of disability of nonage. In other words, emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the benefits of their parents providing for them and the protection of the Department of Children and Family Services.²⁴

In Florida, the disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could perform if not a minor.²⁵

²² Section 382.025, F.S.

²³ A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*. Retrieved Jan. 29, 2012, from http://www.law.cornell.edu/wex/emancipation_of_minors.

²⁴ A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*. Retrieved Jan. 29, 2012, from [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf).

²⁵ Section 743.01, F.S.

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. The petition must contain the following information:²⁶

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent;²⁷
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect. An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and
- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.²⁸

III. Effect of Proposed Changes:

The bill contains a number of provisions relating to homeless children, including provisions:

²⁶ Section 743.015, F.S.

²⁷ Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

²⁸ Section 743.015, F.S.

- Defining the term “certified homeless youth” to mean a minor who is a homeless child or youth, or an unaccompanied youth, as defined in federal law, and who has been certified as homeless or unaccompanied by:
 - A school district homeless liaison;
 - The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or
 - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee.²⁹
- Authorizing the Department of Health to issue a birth certificate to a certified homeless youth or certain minors who have had the disabilities of nonage removed; and
- Providing that a certified homeless youth who is 16 years of age or older may petition the court to have the disabilities of nonage removed pursuant to s. 743.015, F.S., without the requirement to prepay costs and fees.

This 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.

²⁹ These three criteria are the same as used for other purposes, such as determining dependency on the Free Application for Federal Student Aid (FAFSA). Retrieved Jan. 27, 2012, from <http://www.fafsaonline.com/fafsa-form/dependent-status-for-fafsa-5.php>.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

The bill purports to allow certified homeless youth to petition a court for the removal of the disabilities of nonage under s. 743.015, F.S. However, s. 743.015, F.S., requires that a petition for the removal of the disabilities of nonage be filed by “the minor’s natural or legal guardian or, if there is none, by a guardian ad litem.” The Legislature may wish to amend s. 743.015, F.S., to clarify that a certified homeless youth may file the petition on his or her own.

VII. Related Issues:

There are a variety of reasons that a minor would choose to act as an adult. One of the most important reasons is that a minor cannot enter into a contract. Contracts allow individuals to seek loans, receive credit, enter into lease agreements, and enter employment contracts. The ability to enter into a contract may also present an opportunity for the minor to agree to obligations that he or she may be unable to fulfill.

Current provisions in chapter 743, F.S., to remove the disabilities of nonage are more narrowly constructed than the language proposed in the bill and build in a variety of protections for the minors involved. Children in foster care, for example, may have the disabilities of nonage removed only for certain specific purposes, such as executing agreements for depository financial services,³⁰ executing contracts for a residential lease,³¹ and executing agreements for utility services.³² The Legislature may wish to revise the bill to similarly limit the removal of disabilities of nonage to overcome these common barriers as opposed to providing for complete emancipation.

The Department of Health may need to amend current rules in order to provide a process for certified homeless youth or minors who have had disabilities of nonage removed to obtain his or her birth certificate.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on February 9, 2012:

The committee substitute replaces language automatically giving a homeless youth who is 16 years of age or older the same rights as a minor who has had the disabilities of nonage removed with language giving a youth in the same category the ability to petition the court on his or her own behalf to have the disabilities of nonage removed. The committee substitute also specifies that such a youth will qualify as a person who is not required to prepay costs and fees.

³⁰ Section 743.044, F.S.

³¹ Section 743.045, F.S.

³² Section 743.046, F.S.

B. Amendments:

None.

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



948912

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 87 - 94

and insert:

743.067 Unaccompanied youths.—

(1) A certified homeless youth, as defined in s. 382.002, who is 16 years of age or older may petition the circuit court to have the disabilities of minors removed in order to:

(a) Secure depository financial services, such as checking and savings accounts.

(b) Execute a contract for the lease of residential property.

(c) Execute a contract to secure utility services at a



948912

14 residential property.

15 (2) Upon the issuance of a court order removing the
16 disabilities of minors pursuant to this section, the youth is
17 authorized to make and execute all documents, contracts, or
18 agreements necessary for obtaining the rights, privileges, and
19 benefits authorized by the order as if the youth is otherwise
20 competent to make and execute such contracts. Execution of any
21 such contract or agreement authorized by the court has the same
22 effect as if the act were executed by a person who is not a
23 minor. A youth seeking to enter into such a contract or
24 agreement or execute other necessary instrument incidental to
25 exercising the authority granted by the court must present the
26 court order removing the disabilities of nonage of the minor
27 issued pursuant to this section.

28 (3) A youth who petitions a court pursuant to this section
29 shall be deemed to be an indigent person who is not required to
30 prepay costs and fees under s. 57.081, notwithstanding
31 requirements to obtain a certificate of indigence.

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete lines 11 - 13

36 and insert:

37 authorizing a certified homeless youth to petition a
38 court for removal of the disabilities of nonage to
39 allow the youth to secure depository financial
40 services, execute contracts for the lease of
41 residential property, and obtain utility services;
42 providing for the youth to be deemed an indigent



948912

43
44

person who is not required to prepay certain court
costs and fees;



189850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Substitute for Amendment (948912) (with title amendment)

Delete lines 90 - 95
and insert:
older may petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person who is not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

Section 5. 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:



189850

14 Delete lines 12 - 13
15 and insert:
16 homeless youths 16 years of age or older who apply to
17 a court to have the disabilities of nonage removed
18 shall have court costs waived; requiring a court to
19 advance such cases on the calendar;

By Senator Latvala

16-01165B-12

20121662__

A bill to be entitled

An act relating to homeless youth; amending s.

382.002, F.S.; defining the term "certified homeless youth"; conforming a cross-reference; amending s.

382.0085, F.S.; conforming cross-references; amending s. 382.025, F.S.; providing that a minor who is a

certified homeless youth or who has had the disabilities on nonage removed under specified

provisions may obtain a certified copy of his or her birth certificate; creating s. 743.067, F.S.;

providing that unaccompanied youths who are certified homeless youths 16 years of age or older shall have

specified rights as long as they retain that status;

providing an effective date.

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

Section 1. Subsections (3) through (16) of section 382.002, Florida Statutes, are renumbered as subsections (4) through (17), respectively, a new subsection (3) is added to that section, and present subsections (7) and (8) of that section are amended, to read:

382.002 Definitions.—As used in this chapter, the term:

(3) "Certified homeless youth" means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a, and who has been certified as homeless or unaccompanied by:

(a) A school district homeless liaison;

(b) The director of an emergency shelter program funded by

16-01165B-12

20121662__

the United States Department of Housing and Urban Development,
or the director's designee; or

(c) The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee.

~~(8)(7)~~ "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or a fetus as described in subsection ~~(7)~~ ~~(6)~~. In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the cremation itself is considered final disposition.

~~(9)(8)~~ "Funeral director" means a licensed funeral director or direct disposer licensed pursuant to chapter 497 or other person who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection ~~(7)~~ ~~(6)~~.

Section 2. Subsection (9) of section 382.0085, Florida Statutes, is amended to read:

382.0085 Stillbirth registration.—

(9) This section or s. ~~382.002(15)~~ ~~382.002(14)~~ may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

Section 3. Paragraph (a) of subsection (1) of section 382.025, Florida Statutes, is amended to read:

382.025 Certified copies of vital records; confidentiality; research.—

16-01165B-12

20121662

59 (1) BIRTH RECORDS.—Except for birth records over 100 years
60 old which are not under seal pursuant to court order, all birth
61 records of this state shall be confidential and are exempt from
62 the provisions of s. 119.07(1).

63 (a) Certified copies of the original birth certificate or a
64 new or amended certificate, or affidavits thereof, are
65 confidential and exempt from the provisions of s. 119.07(1) and,
66 upon receipt of a request and payment of the fee prescribed in
67 s. 382.0255, shall be issued only as authorized by the
68 department and in the form prescribed by the department, and
69 only:

70 1. To the registrant, if the registrant is of legal age, is
71 a certified homeless youth, or is a minor who has had the
72 disabilities of nonage removed under s. 743.01 or s. 743.015;

73 2. To the registrant's parent or guardian or other legal
74 representative;

75 3. Upon receipt of the registrant's death certificate, to
76 the registrant's spouse or to the registrant's child,
77 grandchild, or sibling, if of legal age, or to the legal
78 representative of any of such persons;

79 4. To any person if the birth record is over 100 years old
80 and not under seal pursuant to court order;

81 5. To a law enforcement agency for official purposes;

82 6. To any agency of the state or the United States for
83 official purposes upon approval of the department; or

84 7. Upon order of any court of competent jurisdiction.

85 Section 4. Section 743.067, Florida Statutes, is created to
86 read:

87 743.067 Unaccompanied youths.—An unaccompanied youth, as

16-01165B-12

20121662

88 defined in 42 U.S.C. s. 11434a, who is also a certified homeless
89 youth, as defined in s. 382.002, and who is 16 years of age or
90 older shall have the same rights as a minor who has had the
91 disabilities of nonage removed under s. 743.015 and may not be
92 required to have a parent or guardian's consent for any purpose
93 for as long as he or she meets the criteria of those
94 definitions.

95 Section 5. 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)

219/2012

Meeting Date

Topic _____

Bill Number 1662

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-9-12

Meeting Date

Topic Homeless Youth Bill Number 1662
(if applicable)

Name Fely Cuva Amendment Barcode _____
(if applicable)

Job Title Partner, Cuva & Associates LLC

Address 1212 Piedmont Dr. Phone (850) 508-2256
Street

Tallahassee FL 32312 E-mail cuva@mindspring.com
City State Zip

Speaking: For Against Information

Representing FL. Coalition for the Homeless; FL. IMPACT

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)

02-09-12
Meeting Date

Topic Unaccompanied Youth

Bill Number 1662
(if applicable)

Name Legislative Aide to Rep. Glorioso - Amber Smith

Amendment Barcode _____
(if applicable)

Job Title _____

Address 201 West Laurel St. #710
Street

Phone O: 850-488-0807
C: 813-716-0243

Tampa, FL 33602
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-9-12
Meeting Date

Topic Homeless Youth

Bill Number 1662
(if applicable)

Name Tony Pirotta

Amendment Barcode _____
(if applicable)

Job Title Teacher - Armwood High School

Address 544 Oak Creek Dr
Street

Phone (813) 407-1462

Brandon FL 33511
City State Zip

E-mail Tony.Pirotta@sdhc.k12.fl.us

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 9, 2012
Meeting Date

Topic Homeless Youth

Bill Number SB 1662
(if applicable)

Name Kent Spuhler

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 2425 Inmaya Dr.
Street

Phone 850-385-7900

Jal FL 32303
City State Zip

E-mail kent@floridalegal.org

Speaking: For Against Information

Representing Florida Legal Services, 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.

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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)

2-9-12
Meeting Date

Topic Homeless youth

Bill Number 1662
(if applicable)

Name Connie Milito

Amendment Barcode _____
(if applicable)

Job Title Chief Gov. Relations Officer

Address 901 E. Kennedy Blvd
Street
Tampa FL 33601
City State Zip

Phone 813-624-5000

E-mail cmilito@sdhc.us

Speaking: For Against Information

Representing Hillsborough County Public Schools

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Homeless Youth

Bill Number SB 1662
(if applicable)

Name Michael Himes

Amendment Barcode _____
(if applicable)

Job Title _____

Address 6603 Plover Ct

Phone (813) 685-9412

Seffner FL 33584
City State Zip

E-mail _____

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12

Meeting Date

Topic Homeless Youth

Bill Number 1662
(if applicable)

Name Jessica Ireland

Amendment Barcode _____
(if applicable)

Job Title _____

Address 12306 Langshaw Drive
Street
Thonotosassa FL 33592
City State Zip

Phone (813) 334-3342

E-mail jair2194@yahoo.com

Speaking: For Against Information

Representing Arnuood High School

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/12
Meeting Date

Topic Homeless Youth

Bill Number 1662
(if applicable)

Name Tiara Brooks

Amendment Barcode _____
(if applicable)

Job Title _____

Address 10810 Bloomfield Ridge Place
Street
Seffner FL 33584
City State Zip

Phone (813) 712-9338

E-mail brooks.tiara@gmail.com

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/9/12
Meeting Date

Topic Homeless Youth

Bill Number Wet 2
(if applicable)

Name Tori Wilson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1514 Creekbend Drive
Street

Phone _____

Brandon FL 33510
City State Zip

E-mail _____

Speaking: For Against Information

Representing Armwood High School

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)

2/9/12

Meeting Date

Topic Unaccompanied youth

Bill Number 1662
(if applicable)

Name Stephanie Walker

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1631 Palm Leaf Drive
Street

Phone _____

Brandon FL 33510
City State Zip

E-mail _____

Speaking: For Against Information

Representing Armwood Highschool

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 2044

INTRODUCER: Judiciary Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Child Protection

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	O'Connor	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes changes to numerous provisions in chapter 39, F.S., relating to the central abuse hotline, child protective investigations, and the dependency process. Specifically, the bill does the following:

- Amends the central abuse hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect;
- Allows the Department of Children and Family Services (DCF or department) to discontinue an investigation if it is determined that a false report of abuse, abandonment or neglect has been filed;
- Requires the department to maintain one electronic child welfare case file for each child;
- Requires child protective investigators (CPIs) to determine the need for immediate consultation with law enforcement personnel, child protection teams, and others prior to the commencement of an investigation;
- Eliminates the current bifurcated investigative process and provides for a single procedure for every case accepted for investigation; and

- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.

In addition, the bill: makes changes to the chapter 39, F.S., protective injunction process to prevent child abuse and to mirror language in the civil injunction process in chapter 741, F.S.; amends requirements relating to criminal background and records checks for individuals being considered for placement of a child; and amends provisions relating to termination of parental rights that apply to incarcerated parents. Finally, the bill provides specific circumstances in which the court may order maintaining and strengthening families as a permanency goal in a child's case plan when the child resides with a parent and revises the number of times the Children and Youth Cabinet must meet annually.

The bill substantially amends ss. 39.01, 39.013, 39.0138, 39.201, 39.205, 39.301, 39.302, 39.307, 39.502, 39.504, 39.521, 39.6011, 39.621, 39.701, 39.8055, 39.806, 39.823, 39.828, and 402.56, Florida Statutes.

II. Present Situation:

Background

Chapter 39, F.S., provides direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development. It also ensures secure and safe custody; promotes the health and well-being of all children under the state's care; and prevents the occurrence of child abuse, neglect, and abandonment.¹ The central abuse hotline and the child protective investigation comprise the “front-end” of the child protection system in Florida.²

Florida Abuse Hotline

The department operates the central abuse hotline (hotline), a 24 hour a day, 7 day a week reporting system which serves as a point of contact for individuals who reasonably suspect or believe that a child has been abused, abandoned, or neglected³ by a parent, legal custodian, caregiver, or other person responsible for the child's welfare⁴ or believe that a child is in need of supervision and care but has no parent, legal custodian, or responsible adult relative immediately known and available.^{5, 6}

Callers to the hotline may remain anonymous. However, various professionals are required to provide their names as part of the permanent report.⁷ Once a call has been made to the hotline, hotline counselors enter all information into the Florida Safe Families Network (FSFN), and

¹ Section 39.001(1)(a), F.S.

² Sections 39.201 and 39.301, F.S.

³ As defined by s. 39.01(1), (2), and (44), F.S.

⁴ As defined by s. 39.01(10), (47) and (49), F.S.

⁵ Section 39.201(1)(a), F.S.

⁶ In 2008, the department was authorized to accept reports to the central abuse hotline by fax or web-based report. Chapter 2008-245, Laws of Fla.

⁷ Section 39.201, F.S.

determine if the call meets the statutory definition of child abuse, abandonment, or neglect by a caregiver.⁸ If the call meets one of those definitions, it is accepted as a report and referred to the appropriate child investigative office.⁹ The Department of Children and Families (DCF or department) is required to maintain a master file for each child whose report is accepted by the hotline.¹⁰

In 2007, the department authorized the central abuse hotline to begin implementing new procedures related to calls that do not meet the criteria to be accepted as a report, but may indicate situations in which a family needs help. These have been referred to as “prevention referrals,” “parent needs assistance referrals,” or “special condition referrals.” The expectation of these referrals was for circuits to utilize local resources to prevent a child from being placed at risk.^{11, 12}

Child Protective Investigations

The department’s approach to child protective investigations has historically been marked by change:

- In 1992, the Florida House of Representatives Aging and Human Services Committee decided that incremental changes made in the past relating to child protective investigations had not remedied perceived problems with the process and wanted a more systematic approach to reforming the child protection system.¹³ Legislation was enacted which directed the department to prepare a strategic plan to establish a clear and consistent direction for policy and programs for the child protection system, including goals, objectives, and strategies.¹⁴ Recommendations in the completed strategic plan included creating the statutory authority for developing and demonstrating the efficacy of a service-oriented response system to reports of child abuse and neglect.¹⁵
- With the creation of part III of chapter 415, F.S., entitled Family Services Response System (FSRS),¹⁶ in 1993, Florida was one of the first two states to implement a differential response system. The provisions in Florida law relating to the FSRS constitute the assessment response of a differential response system. The approach provided for a nonadversarial response to reports of abuse and neglect by assessing for and delivering services to remove any determined risk, while providing support for the family. The legislation allowed local

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Department of Children and Family Services. Prevention Referral Guidance Memorandum, Dec. 1, 2009.

¹² Early problems included circuits and lead agencies providing inconsistent responses to these referrals. A subsequent memorandum provided some clarification for the referral process. Department of Children and Family Services. Child Prevention Referral Guidance and Clarification Memorandum, Jan. 19, 2010.

¹³ Final Bill Analysis and Economic Impact Statement, CS/HB 593, Florida House of Representatives, Committee on Aging and Human Services, Apr. 3, 1993.

¹⁴ Chapter 92-58, Laws of Fla. In developing the plan, the department was required to engage a broad spectrum of individuals and groups and look at the child protection system in its entirety.

¹⁵ Final Bill Analysis and Economic Impact Statement, *supra* note 13.

¹⁶ Chapter 93-25, Laws of Fla. The legislation not only created part III of chapter 415, F.S., entitled Family Services Response System, but also created part IV, entitled Protective Investigations, which resulted in a clear statutory delineation between the two types of responses to reports of child abuse and neglect. The legislation also required an outcome evaluation and three annual status reports to be submitted to the Legislature beginning January 1, 1995.

service districts the flexibility to design the FSRS to meet local community needs¹⁷ and required an ongoing community planning effort to include the approval of the recently established Health and Human Service Boards.¹⁸

- The department began steps toward the implementation of FSRS in districts statewide. Despite some positive findings reported in subsequent outcome evaluations, difficulties identified during the course of the evaluation had a negative effect on the viability and support for FSRS.¹⁹ In addition to problems identified in the outcome evaluation, an assessment of dependency cases by Florida's Dependency Court Improvement Program (DCIP)²⁰ revealed enough judicial concern with the inconsistent implementation of the FSRS, and compromised child safety as a result of decisions being made by department staff, that the DCIP recommended that Florida return to the use of a traditional protective investigation for all reports.²¹
- During the 1998 session, legislation was enacted which incorporated all of the recommendations of the DCIP, as well as the mandated provisions of the newly enacted federal Adoption and Safe Families Act, and Florida's version of a differential response system was repealed.²² As a result, all districts returned to the investigation of all child protective reports culminating in a finding associated with a child victim and perpetrator. Currently, Florida law does not allow for the use of a differential response system.
- In 2003, the Protective Investigation Retention Workgroup (PIRW) was formed under the direction of DCF for the purpose of examining a number of the issues relating to retention of protective investigators.²³ The product of the workgroup was a comprehensive set of recommendations, including development of a framework for a differential response system to be piloted in multiple sites.^{24, 25} Recommendations of the workgroup also resulted in legislation creating two types of investigative response: onsite and enhanced onsite.²⁶

¹⁷ Section 415.5018, F.S. (1993).

¹⁸ *Id.*

¹⁹ Alternative Response System Design Report, Prepared for the Florida Department of Children and Family Services by the Child Welfare Institute (Dec. 2006).

²⁰ Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when Congress funded a comprehensive research initiative to assess judicial management of foster care and adoption proceedings. The mandate to the highest court in every state was to assess the court's management of dependency cases to determine the level of compliance with the Adoption Assistance and Child Welfare Act and to develop an action plan to effect positive change in legislation, policy, judicial oversight, representation, and practice and procedure.

²¹ Committee on Children, Families, and Elder Affairs, The Florida Senate, *Differential Response To Reports Of Child Abuse And Neglect* (Interim Report 2011-105) (Oct. 2010) (on file with the Senate Committee on Judiciary).

²² Chapter 98-403, Laws of Fla. CS/HB 1019. Part III of chapter 39, F.S., entitled Protective Investigations, was created and all calls accepted by the hotline as reports were required to be investigated.

²³ See Committee on Children and Families, The Florida Senate, *Retention of Protective Investigators and Protective Investigative Supervisors* (Interim Report 2003-110) (Jan. 2003) (on file with the Senate Committee on Judiciary), and Committee on Children and Families, The Florida Senate, *Retention of Protective Investigators Phase II*, 24 (Interim Report 2004-113) (Nov. 2003) (on file with the Senate Committee on Judiciary).

²⁴ Protective Investigator Retention Workgroup, Report to the Legislature, Department of Children and Family Services, Dec. 31, 2003.

²⁵ In 2005, the DCF Family Safety program office issued a Request for Proposal (RFP) for assistance in designing a differential response system pilot project in Florida. The program office limited the scope of the project to Bay, Duval, and Seminole counties. The pilots ran for six months, beginning in mid 2008, with mixed results. Florida's Alternative Response Pilot Final Summary Report, Florida Department of Children and Family Services, Family Safety Program Office, Feb., 2009.

²⁶ Chapter 2003-127, Laws of Fla.

- The department proposed legislation to implement a statewide differential response system for responding to reports of child abuse and neglect during the 2009 and 2010 Legislative Sessions.²⁷

Chapter 39 Protective Injunctions

Current law permits a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and if there is reasonable cause for the injunction.²⁸ An injunction issued pursuant to chapter 39, F.S., may order an alleged or actual offender to:

- Refrain from further abuse or acts of domestic violence;
- Participate in a specialized treatment program;
- Limit contact or communication with the child victim, other children in the home, or any other child;
- Refrain from contacting the child at home, school, work, or wherever the child may be found;
- Have limited or supervised visitation with the child;
- Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members; and
- Vacate the home in which the child resides.²⁹

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state, allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.³⁰

The department has reported that some judges do not interpret the law to allow for jurisdiction to attach to the dependency courts when an injunction for protection under s. 39.504, F.S., is filed prior to, or in lieu of, a shelter or dependency petition. Judges are reluctant to advance a petition for injunction unless a dependency action is also filed because of this jurisdictional issue. Current law does not allow for a warrantless arrest.³¹

Termination of Parental Rights

Current law provides that grounds for the termination of parental (TPR) rights may be established under a number of circumstances, including when the parent of a child is incarcerated in a state or federal correctional institution and either:

- The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

²⁷ See SB 2288 (2009) and SB 2676 (2010).

²⁸ Section 39.504, F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Department of Children and Families. *Staff Analysis and Economic Impact Statement, HB 803*. (Dec. 5, 2011). At the time of this analysis HB 803 and PSB 7166 were identical.

- The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined in s. 775.084, F.S., or a sexual predator as defined in s. 775.21, F.S.; has been convicted of first-degree or second-degree murder in violation of s. 782.04, F.S., or a sexual battery that constitutes a capital, life, or first-degree felony violation of s. 794.011, F.S.; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph;³² or
- The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

The measurement of the child's remaining minority runs from the date the termination of parental rights petition is filed. The court is limited to relying solely on the length of the parent's sentence and may not consider the quality of that time in the child's development.³³ The court must consider whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches 18, not whether the time the parent has been incarcerated in the past was a substantial portion of the child's life to that point.³⁴

Currently, the courts interpret "substantial portion of the child's remaining minority" as a mathematical formula. In determining what constitutes a substantial portion of the child's remaining minority, the courts have found that 25 percent, 26 percent, 28.6 percent and 32 percent of the child's remaining minority was not substantial.

- *W.W. v. Department of Children and Families* held that incarceration for a period constituting 25 percent of the child's minority was not a substantial portion of the child's minority.³⁵
- *In re A.W.* held that remaining incarceration constituting 26 percent and 32 percent of the remaining minority of the children did not constitute a substantial portion of child's minority.³⁶

Children and Youth Cabinet

The Children and Youth Cabinet (cabinet) was created in 2007 to ensure that the public policy of the state relating to children and youth be developed to promote interdepartmental collaboration and program implementation so that services designed for children and youth are planned, managed, and delivered in a holistic and integrated manner to improve the children's self-

³² As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction.

³³ *In re A.W.*, 816 So. 2d 1261 (Fla. 2d DCA 2002).

³⁴ *In re J.D.C.*, 819 So. 2d 264 (Fla. 2d DCA 2002); *See also B.C. v. Department of Children and Families*, 887 So. 2d 1046 (Fla. 2004).

³⁵ *W.W. v. Department of Children and Families*, 811 So. 2d 791 (Fla. 4th DCA 2002).

³⁶ *In re A.W.*, 816 So. 2d at 1264.

sufficiency, safety, economic stability, health, and quality of life.³⁷ The cabinet is currently required to meet at least six times each year in different regions of the state in order to solicit input from the public and any other individual offering testimony relevant to the issues considered. Each meeting must include a public comment session.³⁸

III. Effect of Proposed Changes:

Central Abuse Hotline

The department is currently making referrals known as “Special Condition Referrals” without statutory authority. The bill authorizes the department to refer calls to the central abuse hotline from parents or legal custodians who seek help, to voluntary community services providers after it is determined that the call does not meet the statutory threshold for a child protective investigation.

Child Protective Investigations

This bill proposes substantial changes to the child protective investigation process with the intent to strengthen the investigation process, streamline investigative activities, and provide a more focused framework for on-going services to be provided.³⁹ Current law provides for two types of investigative responses; “enhanced” and “onsite.”⁴⁰ The abbreviated “onsite” investigative process, with the exception of minor requirement exemptions, mirrors the “enhanced” or “traditional” investigative process, and essentially renders them indistinguishable.⁴¹ The department reports that due to the prescriptive nature of the current statute, child protective investigators are inhibited from developing different criteria and response protocols to effectively engage families. The department also reports that the current statute does not provide for differentiation between risk and safety that guides a child protective investigator’s determination of response and service provision.⁴²

The bill contains the following provisions related to child protective investigations:

- Provides DCF with the discretion whether to file a dependency petition with the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk.
- Requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and family have received.

³⁷ Chapter 2007-151, Laws of Fla.

³⁸ Section 402.56, F.S.

³⁹ Following the death of Nubia Barahona, Secretary Wilkins convened the Child Protection Improvement Advisory Board to draft an “overhaul of the way DCF investigators handle child abuse cases, of the hotline that filters thousands of abuse calls annually and of the community agencies that serve foster families.” A. Valdes, *Barahona Death to Spur Florida Child Protection Overhaul*, THE PALM BEACH POST. Jun. 16, 2011. It is unclear whether the changes proposed in the bill are a result of the work of the advisory board.

⁴⁰ Section 39.301, F.S.

⁴¹ *Id.*

⁴² Department of Children and Families, *Staff Analysis and Economic Impact Statement, HB 803* (Dec. 5, 2011). At the time of this analysis HB 803 and PSB 7166 were identical.

- Removes several provisions from current law which provide conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline that is accepted will be investigated and provides the following list of activities to be performed, some of which are already in current law:
 - Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline;
 - Interview collateral contacts, which may include professionals who know the child;
 - Conduct face-to-face interviews, including with the child's parent or caregiver; and
 - Assess the child's residence.

The bill contains the following new provisions related to the investigative process, which requires the department to:

- Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals; and
- Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill nor current law defines "safety" or "risk." It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.

The bill also:

- Allows DCF or its authorized agent to discontinue all investigative activities at the point it is determined that a false report has been referred;
- Establishes the Statewide Automated Child Welfare Information System as the single standard electronic case file on a child for centralized documentation and maintenance on services provided to the child and family;
- Requires the child protection investigator to determine the need for immediate consultation with law enforcement, a child protection team, a domestic violence shelter or advocate, and a substance abuse or mental health professional prior to commencement of an investigation;
- Authorizes the child protection investigator to close a case at various stages of an investigation when it is determined that a child is safe and there are no signs of impending danger;
- Provides that, at the close of a child protective investigation, the investigator is required to provide to the alleged perpetrator and the parent or legal custodian of the child a summary of findings from the investigation and inform them of their right to access confidential reports associated with the investigation;
- Outlines the activities, training requirements and qualitative reviews that must be performed to enhance the skills of staff and improve the region's overall child protection system; and
- Provides conditions under which an investigator may close a case and makes changes to the case review process to identify family strengths and weaknesses.

Chapter 39 Protective Injunctions

The bill makes improvements and changes to the protective injunction process to prevent child abuse in s. 39.504, F.S., and mirrors language in the civil injunction process in chapter 741, F.S. The bill contains the following provisions related to protective injunctions under chapter 39, F.S.:

- Amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. The department reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child.
- Establishes jurisdiction to enable courts to accept a domestic violence injunction filed by the department rather than the victim of such violence. and
- Effectuates the legislative intent of 2008 by creating a process similar to the procedures in adult domestic violence cases under chapter 741, F.S., for the entry of an immediate injunction, which also protects the constitutionally-protected due process rights of the respondent. The department reports these changes are essential to providing a consistent and positive application of injunctions under chapter 39, F.S.⁴³

Termination of Parental Rights

The Guardian Ad Litem Program reports that using a purely mathematical formula to determine termination of parental rights (TPR) of an incarcerated parent does not support the provisions of chapter 39, F.S., where the primary consideration is for permanency and the best interest of the child.⁴⁴ The bill authorizes termination upon a “significant portion of the child’s minority” and replaces the forward mathematical time calculation with a qualitative review of the significance of the incarceration to a child’s life. The judicial review would begin on the date the parent entered the correctional institution rather than at the time of the filing of the TPR petition.

The bill also contains the following provisions related to termination of parental rights:

- Amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months.⁴⁵ and
- Amends the definitions of the terms “abandoned” and “harm” to conform with changes made by the bill related to termination of parental rights when a parent is incarcerated.

⁴³ *Id.*

⁴⁴ Communication from Alan Abramowitz, Executive Director, Florida Statewide Guardian ad Litem Office, Nov. 21, 2011. (on file with the Committee on Children, Families, and Elder Affairs).

⁴⁵ See ss. 39.401, 39.6011, 39.621, 39.701, and 39.8055, F.S.

Additional Provisions

The bill also does the following:

- Clarifies that a criminal history records check on all persons, being considered by the department for placement of a child includes parents of the child and all members of the household 12 years of age or older; requires submission of fingerprints to the Florida Department of Law Enforcement (FDLE) on household members 18 years of age and older and on other visitors; and requires an out-of-state criminal history records check on any person 18 years of age or older who resided in another state if that state allows the release of such records. The department reports that there are inconsistent interpretations around the state related to the background screening requirements for parents who are being considered for placement of a child and whether children who are 12 to 18 years of age should be fingerprinted.
- Requires the protective investigation of an institution to include an interview with the child's parent or legal guardian rather than an onsite visit of the child's place of residence.
- Eliminates the seven day requirement for an assessment of service and treatment needs regarding child-on-child sexual abuse reports, recognizing that assessments often can take longer than seven days.
- Clarifies that maintaining and strengthening families is a statutorily authorized case plan goal for children who remain in their homes under protective supervision. and
- Requires that the Children and Youth Cabinet must meet at least four times annually.

Effective Date

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 9, 2012:**

The committee substitute:

- Provides that, at the close of a child protective investigation, the investigator is required to provide to the alleged perpetrator and the parent or legal custodian of the child a summary of findings from the investigation and inform them of their right to access confidential reports associated with the investigation; and
- Provides that the department's training requirements for child protective investigators must ensure that investigators know how to explain to the alleged perpetrator and the parent or legal custodian the results of the investigation and inform them of their right to access confidential reports associated with the investigation.

B. Amendments:

None.



161064

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Between lines 675 and 676

insert:

4. At the close of an investigation the department or the sheriff providing child protective services shall provide to the person who is alleged to have caused the abuse, neglect or abandonment and the parent or legal custodian a summary of findings from the investigation and provide information about their right to access confidential reports in accordance with s.39.202.



394184

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Between lines 696 and 697
insert:
3. Know how to explain, to the parent, legal custodian, or person who is alleged to have caused the abuse, neglect, or abandonment, the results of the investigation and to provide information about their right to access confidential reports in accordance with s. 39.202, prior to closing the case.

By the Committee on Children, Families, and Elder Affairs

586-02078-12

20122044__

1 A bill to be entitled
 2 An act relating to child protection; amending s.
 3 39.01, F.S.; revising the definitions of the term
 4 "abandoned" or "abandonment," "institutional child
 5 abuse or neglect," and "abandons the child within the
 6 context of harm"; amending s. 39.013, F.S.; specifying
 7 when jurisdiction attaches for a petition for an
 8 injunction to prevent child abuse issued pursuant to
 9 specified provisions; amending s. 39.0138, F.S.;
 10 revising provisions relating to criminal history
 11 records check on persons being considered for
 12 placement of a child; requiring a records check
 13 through the State Automated Child Welfare Information
 14 System; providing for an out-of-state criminal history
 15 records check of certain persons who have lived out of
 16 state if such records may be obtained; amending s.
 17 39.201, F.S.; providing procedures for calls from a
 18 parent or legal custodian seeking assistance for
 19 himself or herself which do not meet the criteria for
 20 being a report of child abuse, abandonment, or
 21 neglect, but show a potential future risk of harm to a
 22 child and requiring a referral if a need for community
 23 services exists; specifying that the central abuse
 24 hotline is the first step in the safety assessment and
 25 investigation process; amending s. 39.205, F.S.;
 26 permitting discontinuance of an investigation of child
 27 abuse, abandonment, or neglect during the course of
 28 the investigation if it is determined that the report
 29 was false; amending s. 39.301, F.S.; substituting

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

586-02078-12

20122044__

30 references to a standard electronic child welfare case
 31 for a master file; revising requirements for such a
 32 file; revising requirements for informing the subject
 33 of an investigation; deleting provisions relating to a
 34 preliminary determination as to whether an
 35 investigation report is complete; revising
 36 requirements for child protective investigation
 37 activities to be performed to determine child safety;
 38 specifying uses for certain criminal justice
 39 information accesses by child protection
 40 investigators; requiring documentation of the present
 41 and impending dangers to each child through use of a
 42 standardized safety assessment; revising provisions
 43 relating to required protective, treatment, and
 44 ameliorative services; revising requirements for the
 45 Department of Children and Family Service's training
 46 program for staff responsible for responding to
 47 reports accepted by the central abuse hotline;
 48 requiring the department's training program at the
 49 regional and district levels to include results of
 50 qualitative reviews of child protective investigation
 51 cases handled within the region or district; revising
 52 requirements for the department's quality assurance
 53 program; amending s. 39.302, F.S.; requiring that a
 54 protective investigation must include an interview
 55 with the child's parent or legal guardian; amending s.
 56 39.307, F.S.; requiring the department, contracted
 57 sheriff's office providing protective investigation
 58 services, or contracted case management personnel

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

586-02078-12

20122044__

59 responsible for providing services to adhere to
 60 certain procedures relating to reports of child-on-
 61 child sexual abuse; deleting a requirement that an
 62 assessment of service and treatment needs to be
 63 completed within a specified period; amending s.
 64 39.504, F.S.; revising provisions relating to the
 65 process for seeking a child protective injunction;
 66 providing for temporary ex parte injunctions;
 67 providing requirements for service on an alleged
 68 offender; revising provisions relating to the contents
 69 of an injunction; providing for certain relief;
 70 providing requirements for notice of a hearing on a
 71 motion to modify or dissolve an injunction; providing
 72 that a person against whom an injunction is entered
 73 does not automatically become a party to a subsequent
 74 dependency action concerning the same child unless he
 75 or she was a party to the action in which the
 76 injunction was entered; amending s. 39.521, F.S.;
 77 requiring a home study report if a child has been
 78 removed from the home and will be remaining with a
 79 parent; substituting references to the State Automated
 80 Child Welfare Information System for the Florida Abuse
 81 Hotline Information System applicable to records
 82 checks; authorizing submission of fingerprints of
 83 certain household members; authorizing requests for
 84 national criminal history checks and fingerprinting of
 85 any visitor to the home known to the department;
 86 amending s. 39.6011, F.S.; providing additional
 87 options for the court with respect to case plans;

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

586-02078-12

20122044__

88 providing for expiration of a child's case plan no
 89 later than 12 months after the date the child was
 90 adjudicated dependent; conforming a cross-reference to
 91 changes made by the act; amending s. 39.621, F.S.;
 92 revising terminology relating to permanency
 93 determinations; amending s. 39.701, F.S.; providing
 94 that a court must schedule a judicial review hearing
 95 if the citizen review panel recommends extending the
 96 goal of reunification for any case plan beyond 12
 97 months from the date the child was adjudicated
 98 dependent, unless specified other events occurred
 99 earlier; conforming a cross-reference to changes made
 100 by the act; amending s. 39.8055, F.S.; requiring the
 101 department to file a petition to terminate parental
 102 rights within a certain number of days after the
 103 completion of a specified period after the child was
 104 sheltered or adjudicated dependent, whichever occurs
 105 first; amending s. 39.806, F.S.; providing additional
 106 criteria for the court to consider when deciding
 107 whether to terminate the parental rights of a parent
 108 or legal guardian because the parent or legal guardian
 109 is incarcerated; increasing the number of months of
 110 failure of the parent or parents to substantially
 111 comply with a child's case plan in certain
 112 circumstances that constitutes evidence of continuing
 113 abuse, neglect, or abandonment and grounds for
 114 termination of parental rights; revising a cross-
 115 reference; clarifying applicability of certain
 116 amendments made by the act; amending ss. 39.502,

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117 39.823, and 39.828, F.S.; conforming cross-references
 118 to changes made by the act; amending s. 402.56, F.S.;
 119 directing the Children and Youth Cabinet to meet at
 120 least four times per year rather than six times per
 121 year; providing an effective date.

122
 123 Be It Enacted by the Legislature of the State of Florida:

124
 125 Section 1. Subsection (1), paragraph (e) of subsection
 126 (32), and subsection (33) of section 39.01, Florida Statutes,
 127 are amended to read:

128 39.01 Definitions.—When used in this chapter, unless the
 129 context otherwise requires:

130 (1) "Abandoned" or "abandonment" means a situation in which
 131 the parent or legal custodian of a child or, in the absence of a
 132 parent or legal custodian, the caregiver, while being able, has
 133 made ~~makes~~ no significant contribution to the child's care and
 134 maintenance or provision for the child's support and has failed
 135 to establish or maintain a substantial and positive relationship
 136 with the child, or both. For purposes of this subsection,
 137 "establish or maintain a substantial and positive relationship"
 138 includes, but is not limited to, frequent and regular contact
 139 with the child through frequent and regular visitation or
 140 frequent and regular communication to or with the child, and the
 141 exercise of parental rights and responsibilities. Marginal
 142 efforts and incidental or token visits or communications are not
 143 sufficient to establish or maintain a substantial and positive
 144 relationship with a child. The term does not include a
 145 surrendered newborn infant as described in s. 383.50, a "child

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146 in need of services" as defined in chapter 984, or a "family in
 147 need of services" as defined in chapter 984. The incarceration,
 148 repeated incarceration, or extended incarceration of a parent,
 149 legal custodian, or caregiver responsible for a child's welfare
 150 may support a finding of abandonment.

151 (32) "Harm" to a child's health or welfare can occur when
 152 any person:

153 (e) Abandons the child. Within the context of the
 154 definition of "harm," the term "abandoned the child" or
 155 "abandonment of the child" means a situation in which the parent
 156 or legal custodian of a child or, in the absence of a parent or
 157 legal custodian, the caregiver, while being able, has made ~~makes~~
 158 no significant contribution to the child's care and maintenance
 159 or provision for the child's support and has failed to establish
 160 or maintain a substantial and positive relationship with the
 161 child, or both. For purposes of this paragraph, "establish or
 162 maintain a substantial and positive relationship" includes, but
 163 is not limited to, frequent and regular contact with the child
 164 through frequent and regular visitation or frequent and regular
 165 communication to or with the child, and the exercise of parental
 166 rights and responsibilities. Marginal efforts and incidental or
 167 token visits or communications are not sufficient to establish
 168 or maintain a substantial and positive relationship with a
 169 child. The term "abandoned" does not include a surrendered
 170 newborn infant as described in s. 383.50, a child in need of
 171 services as defined in chapter 984, or a family in need of
 172 services as defined in chapter 984. The incarceration, repeated
 173 incarceration, or extended incarceration of a parent, legal
 174 custodian, or caregiver responsible for a child's welfare may

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175 support a finding of abandonment.

176 (33) "Institutional child abuse or neglect" means
 177 situations of known or suspected child abuse or neglect in which
 178 the person allegedly perpetrating the child abuse or neglect is
 179 an employee of a private school, public or private day care
 180 center, residential home, institution, facility, or agency or
 181 any other person at such institution responsible for the child's
 182 care as defined in subsection (47).

183 Section 2. Subsection (2) of section 39.013, Florida
 184 Statutes, is amended to read:

185 39.013 Procedures and jurisdiction; right to counsel.—

186 (2) The circuit court has exclusive original jurisdiction
 187 of all proceedings under this chapter, of a child voluntarily
 188 placed with a licensed child-caring agency, a licensed child-
 189 placing agency, or the department, and of the adoption of
 190 children whose parental rights have been terminated under this
 191 chapter. Jurisdiction attaches when the initial shelter
 192 petition, dependency petition, or termination of parental rights
 193 petition, or a petition for an injunction to prevent child abuse
 194 issued pursuant to s. 39.504, is filed or when a child is taken
 195 into the custody of the department. The circuit court may assume
 196 jurisdiction over any such proceeding regardless of whether the
 197 child was in the physical custody of both parents, was in the
 198 sole legal or physical custody of only one parent, caregiver, or
 199 some other person, or was not in the physical or legal custody
 200 of any ~~no~~ person when the event or condition occurred that
 201 brought the child to the attention of the court. When the court
 202 obtains jurisdiction of any child who has been found to be
 203 dependent, the court shall retain jurisdiction, unless

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204 relinquished by its order, until the child reaches 18 years of
 205 age. However, if a youth petitions the court at any time before
 206 his or her 19th birthday requesting the court's continued
 207 jurisdiction, the juvenile court may retain jurisdiction under
 208 this chapter for a period not to exceed 1 year following the
 209 youth's 18th birthday for the purpose of determining whether
 210 appropriate aftercare support, Road-to-Independence Program,
 211 transitional support, mental health, and developmental
 212 disability services, to the extent otherwise authorized by law,
 213 have been provided to the formerly dependent child who was in
 214 the legal custody of the department immediately before his or
 215 her 18th birthday. If a petition for special immigrant juvenile
 216 status and an application for adjustment of status have been
 217 filed on behalf of a foster child and the petition and
 218 application have not been granted by the time the child reaches
 219 18 years of age, the court may retain jurisdiction over the
 220 dependency case solely for the purpose of allowing the continued
 221 consideration of the petition and application by federal
 222 authorities. Review hearings for the child shall be set solely
 223 for the purpose of determining the status of the petition and
 224 application. The court's jurisdiction terminates upon the final
 225 decision of the federal authorities. Retention of jurisdiction
 226 in this instance does not affect the services available to a
 227 young adult under s. 409.1451. The court may not retain
 228 jurisdiction of the case after the immigrant child's 22nd
 229 birthday.

230 Section 3. Section 39.0138, Florida Statutes, is amended to
 231 read:

232 39.0138 Criminal history and other records checks ~~check~~;

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233 limit on placement of a child.-

234 (1) The department shall conduct a records check through
 235 the State Automated Child Welfare Information System (SACWIS)
 236 and a local and statewide criminal history records check on all
 237 persons, including parents, being considered by the department
 238 for placement of a child ~~subject to a placement decision~~ under
 239 this chapter, including all nonrelative placement decisions, and
 240 all members of the household, 12 years of age and older, of the
 241 person being considered, ~~and frequent visitors to the household~~.
 242 For purposes of this section, a criminal history records check
 243 may include, but is not limited to, submission of fingerprints
 244 to the Department of Law Enforcement for processing and
 245 forwarding to the Federal Bureau of Investigation for state and
 246 national criminal history information, and local criminal
 247 records checks through local law enforcement agencies of all
 248 household members 18 years of age and older and other visitors
 249 to the home. An out-of-state criminal history records check must
 250 be initiated for any person 18 years of age or older who resided
 251 in another state if that state allows the release of such
 252 records. A criminal history records check must also include a
 253 ~~search of the department's automated abuse information system~~.
 254 The department shall establish by rule standards for evaluating
 255 any information contained in the automated system relating to a
 256 person who must be screened for purposes of making a placement
 257 decision.

258 (2) The department may not place a child with a person
 259 other than a parent if the criminal history records check
 260 reveals that the person has been convicted of any felony that
 261 falls within any of the following categories:

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262 (a) Child abuse, abandonment, or neglect;
 263 (b) Domestic violence;
 264 (c) Child pornography or other felony in which a child was
 265 a victim of the offense; or
 266 (d) Homicide, sexual battery, or other felony involving
 267 violence, other than felony assault or felony battery when an
 268 adult was the victim of the assault or battery.
 269 (3) The department may not place a child with a person
 270 other than a parent if the criminal history records check
 271 reveals that the person has, within the previous 5 years, been
 272 convicted of a felony that falls within any of the following
 273 categories:
 274 (a) Assault;
 275 (b) Battery; or
 276 (c) A drug-related offense.
 277 (4) The department may place a child in a home that
 278 otherwise meets placement requirements if a name check of state
 279 and local criminal history records systems does not disqualify
 280 the applicant and if the department submits fingerprints to the
 281 Department of Law Enforcement for forwarding to the Federal
 282 Bureau of Investigation and is awaiting the results of the state
 283 and national criminal history records check.
 284 (5) Persons with whom placement of a child is being
 285 considered or approved must disclose to the department any prior
 286 or pending local, state, or national criminal proceedings in
 287 which they are or have been involved.
 288 (6) The department may examine the results of any criminal
 289 history records check of any person, including a parent, with
 290 whom placement of a child is being considered under this

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291 section. The complete criminal history records check must be
 292 considered when determining whether placement with the person
 293 will jeopardize the safety of the child being placed.

294 (7) (a) The court may review a decision of the department to
 295 grant or deny the placement of a child based upon information
 296 from the criminal history records check. The review may be upon
 297 the motion of any party, the request of any person who has been
 298 denied a placement by the department, or on the court's own
 299 motion. The court shall prepare written findings to support its
 300 decision in this matter.

301 (b) A person who is seeking placement of a child but is
 302 denied the placement because of the results of a criminal
 303 history records check has the burden of setting forth sufficient
 304 evidence of rehabilitation to show that the person will not
 305 present a danger to the child if the placement of the child is
 306 allowed. Evidence of rehabilitation may include, but is not
 307 limited to, the circumstances surrounding the incident providing
 308 the basis for denying the application, the time period that has
 309 elapsed since the incident, the nature of the harm caused to the
 310 victim, whether the victim was a child, the history of the
 311 person since the incident, whether the person has complied with
 312 any requirement to pay restitution, and any other evidence or
 313 circumstances indicating that the person will not present a
 314 danger to the child if the placement of the child is allowed.

315 Section 4. Paragraph (a) of subsection (2) and subsection
 316 (4) of section 39.201, Florida Statutes, are amended to read:

317 39.201 Mandatory reports of child abuse, abandonment, or
 318 neglect; mandatory reports of death; central abuse hotline.-

319 (2) (a) Each report of known or suspected child abuse,

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320 abandonment, or neglect by a parent, legal custodian, caregiver,
 321 or other person responsible for the child's welfare as defined
 322 in this chapter, except those solely under s. 827.04(3), and
 323 each report that a child is in need of supervision and care and
 324 has no parent, legal custodian, or responsible adult relative
 325 immediately known and available to provide supervision and care
 326 shall be made immediately to the department's central abuse
 327 hotline. Such reports may be made on the single statewide toll-
 328 free telephone number or via fax or web-based report. Personnel
 329 at the department's central abuse hotline shall determine if the
 330 report received meets the statutory definition of child abuse,
 331 abandonment, or neglect. Any report meeting one of these
 332 definitions shall be accepted for the protective investigation
 333 pursuant to part III of this chapter. Any call received from a
 334 parent or legal custodian seeking assistance for himself or
 335 herself which does not meet the criteria for being a report of
 336 child abuse, abandonment, or neglect may be accepted by the
 337 hotline for response to ameliorate a potential future risk of
 338 harm to a child. If it is determined by a child welfare
 339 professional that a need for community services exists, the
 340 department shall refer the parent or legal custodian for
 341 appropriate voluntary community services.

342 (4) The department shall ~~operate~~ establish and maintain a
 343 central abuse hotline to receive all reports made pursuant to
 344 this section in writing, via fax, via web-based reporting, or
 345 through a single statewide toll-free telephone number, which any
 346 person may use to report known or suspected child abuse,
 347 abandonment, or neglect at any hour of the day or night, any day
 348 of the week. The central abuse hotline is the first step in the

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349 safety assessment and investigation process. The central abuse
350 hotline shall be operated in such a manner as to enable the
351 department to:

352 (a) Immediately identify and locate prior reports or cases
353 of child abuse, abandonment, or neglect through utilization of
354 the department's automated tracking system.

355 (b) Monitor and evaluate the effectiveness of the
356 department's program for reporting and investigating suspected
357 abuse, abandonment, or neglect of children through the
358 development and analysis of statistical and other information.

359 (c) Track critical steps in the investigative process to
360 ensure compliance with all requirements for any report of abuse,
361 abandonment, or neglect.

362 (d) Maintain and produce aggregate statistical reports
363 monitoring patterns of child abuse, child abandonment, and child
364 neglect. The department shall collect and analyze child-on-child
365 sexual abuse reports and include the information in aggregate
366 statistical reports.

367 (e) Serve as a resource for the evaluation, management, and
368 planning of preventive and remedial services for children who
369 have been subject to abuse, abandonment, or neglect.

370 (f) Initiate and enter into agreements with other states
371 for the purpose of gathering and sharing information contained
372 in reports on child maltreatment to further enhance programs for
373 the protection of children.

374 Section 5. Subsections (3) and (5) of section 39.205,
375 Florida Statutes, are amended to read:

376 39.205 Penalties relating to reporting of child abuse,
377 abandonment, or neglect.—

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378 (3) A person who knowingly and willfully makes public or
379 discloses any confidential information contained in the central
380 abuse hotline or in the records of any child abuse, abandonment,
381 or neglect case, except as provided in this chapter, commits ~~is~~
382 ~~guilty of~~ a misdemeanor of the second degree, punishable as
383 provided in s. 775.082 or s. 775.083.

384 (5) If the department or its authorized agent has
385 determined during the course of ~~after~~ its investigation that a
386 report is a false report, the department may discontinue all
387 investigative activities and shall, with the consent of the
388 alleged perpetrator, refer the report to the local law
389 enforcement agency having jurisdiction for an investigation to
390 determine whether sufficient evidence exists to refer the case
391 for prosecution for filing a false report as defined in s.
392 39.01. During the pendency of the investigation, the department
393 must notify the local law enforcement agency of, and the local
394 law enforcement agency must respond to, all subsequent reports
395 concerning children in that same family in accordance with s.
396 39.301. If the law enforcement agency believes that there are
397 indicators of abuse, abandonment, or neglect, it must
398 immediately notify the department, which must ensure the safety
399 of the children. If the law enforcement agency finds sufficient
400 evidence for prosecution for filing a false report, it must
401 refer the case to the appropriate state attorney for
402 prosecution.

403 Section 6. Section 39.301, Florida Statutes, is amended to
404 read:

405 39.301 Initiation of protective investigations.—

406 (1) Upon receiving a report of known or suspected child

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407 abuse, abandonment, or neglect, or that a child is in need of
 408 supervision and care and has no parent, legal custodian, or
 409 responsible adult relative immediately known and available to
 410 provide supervision and care, the central abuse hotline shall
 411 determine if the report requires an immediate onsite protective
 412 investigation. For reports requiring an immediate onsite
 413 protective investigation, the central abuse hotline shall
 414 immediately notify the department's designated district staff
 415 responsible for protective investigations to ensure that an
 416 onsite investigation is promptly initiated. For reports not
 417 requiring an immediate onsite protective investigation, the
 418 central abuse hotline shall notify the department's designated
 419 district staff responsible for protective investigations in
 420 sufficient time to allow for an investigation. At the time of
 421 notification, the central abuse hotline shall also provide
 422 information to district staff on any previous report concerning
 423 a subject of the present report or any pertinent information
 424 relative to the present report or any noted earlier reports.

425 (2) (a) The department shall immediately forward allegations
 426 of criminal conduct to the municipal or county law enforcement
 427 agency of the municipality or county in which the alleged
 428 conduct has occurred.

429 (b) As used in this subsection, the term "criminal conduct"
 430 means:

431 1. A child is known or suspected to be the victim of child
 432 abuse, as defined in s. 827.03, or of neglect of a child, as
 433 defined in s. 827.03.

434 2. A child is known or suspected to have died as a result
 435 of abuse or neglect.

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436 3. A child is known or suspected to be the victim of
 437 aggravated child abuse, as defined in s. 827.03.

438 4. A child is known or suspected to be the victim of sexual
 439 battery, as defined in s. 827.071, or of sexual abuse, as
 440 defined in s. 39.01.

441 5. A child is known or suspected to be the victim of
 442 institutional child abuse or neglect, as defined in s. 39.01,
 443 and as provided for in s. 39.302(1).

444 6. A child is known or suspected to be a victim of human
 445 trafficking, as provided in s. 787.06.

446 (c) Upon receiving a written report of an allegation of
 447 criminal conduct from the department, the law enforcement agency
 448 shall review the information in the written report to determine
 449 whether a criminal investigation is warranted. If the law
 450 enforcement agency accepts the case for criminal investigation,
 451 it shall coordinate its investigative activities with the
 452 department, whenever feasible. If the law enforcement agency
 453 does not accept the case for criminal investigation, the agency
 454 shall notify the department in writing.

455 (d) The local law enforcement agreement required in s.
 456 39.306 shall describe the specific local protocols for
 457 implementing this section.

458 (3) The department shall maintain a single, standard
 459 electronic child welfare case ~~master~~ file for each child whose
 460 report is accepted by the central abuse hotline for
 461 investigation. Such file must contain information concerning all
 462 reports received by the abuse hotline concerning that child and
 463 all services received by that child and family. The file must be
 464 made available to any department staff, agent of the department,

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465 or contract provider given responsibility for conducting a
466 protective investigation.

467 (4) To the extent practical, all protective investigations
468 involving a child shall be conducted or the work supervised by a
469 single individual in order for there to be broad knowledge and
470 understanding of the child's history. When a new investigator is
471 assigned to investigate a second and subsequent report involving
472 a child, a multidisciplinary staffing shall be conducted which
473 includes new and prior investigators, their supervisors, and
474 appropriate private providers in order to ensure that, to the
475 extent possible, there is coordination among all parties. The
476 department shall establish an internal operating procedure that
477 ensures that all required investigatory activities, including a
478 review of the child's complete investigative and protective
479 services history, are completed by the investigator, reviewed by
480 the supervisor in a timely manner, and signed and dated by both
481 the investigator and the supervisor.

482 (5) (a) Upon commencing an investigation under this part,
483 the child protective investigator shall inform any subject of
484 the investigation of the following:

- 485 1. The names of the investigators and identifying
486 credentials from the department.
- 487 2. The purpose of the investigation.
- 488 3. The right to obtain his or her own attorney and ways
489 that the information provided by the subject may be used.
- 490 4. The possible outcomes and services of the department's
491 response ~~shall be explained to the parent or legal custodian.~~
- 492 5. The right of the parent or legal custodian to be engaged
493 ~~involved~~ to the fullest extent possible in determining the

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494 nature of the allegation and the nature of any identified
495 problem and the remedy.

496 6. The duty of the parent or legal custodian to report any
497 change in the residence or location of the child to the
498 investigator and that the duty to report continues until the
499 investigation is closed.

500 (b) The investigator shall ~~department's training program~~
501 ~~shall ensure that protective investigators know how to fully~~
502 inform parents or legal custodians of their rights and options,
503 including opportunities for audio or video recording of
504 investigators' interviews with parents or legal custodians or
505 children.

506 (6) Upon commencing an investigation under this part, if a
507 report was received from a reporter under s. 39.201(1)(b), the
508 protective investigator must provide his or her contact
509 information to the reporter within 24 hours after being assigned
510 to the investigation. The investigator must also advise the
511 reporter that he or she may provide a written summary of the
512 report made to the central abuse hotline to the investigator
513 which shall become a part of the electronic child welfare case
514 ~~master~~ file.

515 (7) An assessment of safety risk ~~risk~~ and the perceived needs
516 for the child and family shall be conducted in a manner that is
517 sensitive to the social, economic, and cultural environment of
518 the family. This assessment must include a face-to-face
519 interview with the child, other siblings, parents, and other
520 adults in the household and an onsite assessment of the child's
521 residence.

522 (8) Protective investigations shall be performed by the

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523 department or its agent.

524 ~~(9) The person responsible for the investigation shall make~~
 525 ~~a preliminary determination as to whether the report is~~
 526 ~~complete, consulting with the attorney for the department when~~
 527 ~~necessary. In any case in which the person responsible for the~~
 528 ~~investigation finds that the report is incomplete, he or she~~
 529 ~~shall return it without delay to the person or agency~~
 530 ~~originating the report or having knowledge of the facts, or to~~
 531 ~~the appropriate law enforcement agency having investigative~~
 532 ~~jurisdiction, and request additional information in order to~~
 533 ~~complete the report; however, the confidentiality of any report~~
 534 ~~filed in accordance with this chapter shall not be violated.~~

535 ~~(a) If it is determined that the report is complete, but~~
 536 ~~the interests of the child and the public will be best served by~~
 537 ~~providing the child care or other treatment voluntarily accepted~~
 538 ~~by the child and the parents or legal custodians, the protective~~
 539 ~~investigator may refer the parent or legal custodian and child~~
 540 ~~for such care or other treatment.~~

541 ~~(b) If it is determined that the child is in need of the~~
 542 ~~protection and supervision of the court, the department shall~~
 543 ~~file a petition for dependency. A petition for dependency shall~~
 544 ~~be filed in all cases classified by the department as high risk.~~
 545 ~~Factors that the department may consider in determining whether~~
 546 ~~a case is high-risk include, but are not limited to, the young~~
 547 ~~age of the parents or legal custodians; the use of illegal~~
 548 ~~drugs; the arrest of the parents or legal custodians on charges~~
 549 ~~of manufacturing, processing, disposing of, or storing, either~~
 550 ~~temporarily or permanently, any substances in violation of~~
 551 ~~chapter 893; or domestic violence.~~

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552 ~~(e) If a petition for dependency is not being filed by the~~
 553 ~~department, the person or agency originating the report shall be~~
 554 ~~advised of the right to file a petition pursuant to this part.~~

555 (9)(10)(a) For each report received from the central abuse
 556 hotline and accepted for investigation that meets one or more of
 557 the following criteria, the department or the sheriff providing
 558 child protective investigative services under s. 39.3065, shall
 559 perform the following on-site child protective investigation
 560 activities to determine child safety:

561 1. Conduct a review of all relevant, available information
 562 specific to the child and family and alleged maltreatment;
 563 family child welfare history; local, state, and federal criminal
 564 records checks; and requests for law enforcement assistance
 565 provided by the abuse hotline. Based on a review of available
 566 information, including the allegations in the current report, a
 567 determination shall be made as to whether immediate consultation
 568 should occur with law enforcement, the child protection team, a
 569 domestic violence shelter or advocate, or a substance abuse or
 570 mental health professional. Such consultations should include
 571 discussion as to whether a joint response is necessary and
 572 feasible. A determination shall be made as to whether the person
 573 making the report should be contacted before the face-to-face
 574 interviews with the child and family members. A report for which
 575 there is obvious compelling evidence that no maltreatment
 576 occurred and there are no prior reports containing some
 577 indicators or verified findings of abuse or neglect with respect
 578 to any subject of the report or other individuals in the home. A
 579 prior report in which an adult in the home was a victim of abuse
 580 or neglect before becoming an adult does not exclude a report

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581 otherwise meeting the criteria of this subparagraph from the
 582 onsite child protective investigation provided for in this
 583 subparagraph. The process for an onsite child protective
 584 investigation stipulated in this subsection may not be conducted
 585 if an allegation meeting the criteria of this subparagraph
 586 involves physical abuse, sexual abuse, domestic violence,
 587 substance abuse or substance exposure, medical neglect, a child
 588 younger than 3 years of age, or a child who is disabled or lacks
 589 communication skills.

590 2. Conduct A report concerning an incident of abuse which
 591 is alleged to have occurred 2 or more years prior to the date of
 592 the report and there are no other indicators of risk to any
 593 child in the home.

594 (b) The onsite child protective investigation to be
 595 performed shall include a face-to-face interviews interview with
 596 the child; other siblings, if any; and the parents, legal
 597 custodians, or caregivers, ; and other adults in the household
 598 and an onsite assessment of the child's residence in order to:

599 3.1- Assess the child's residence, including a
 600 determination of Determine the composition of the family and ~~or~~
 601 household, including the name, address, date of birth, social
 602 security number, sex, and race of each child named in the
 603 report; any siblings or other children in the same household or
 604 in the care of the same adults; the parents, legal custodians,
 605 or caregivers; and any other adults in the same household.

606 4.2- Determine whether there is any indication that any
 607 child in the family or household has been abused, abandoned, or
 608 neglected; the nature and extent of present or prior injuries,
 609 abuse, or neglect, and any evidence thereof; and a determination

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610 as to the person or persons apparently responsible for the
 611 abuse, abandonment, or neglect, including the name, address,
 612 date of birth, social security number, sex, and race of each
 613 such person.

614 5.3- Complete assessment of immediate child safety for
 615 Determine the immediate and long-term risk to each child based
 616 on available records, interviews, and observations with all
 617 persons named in subparagraph 2. and appropriate collateral
 618 contacts, which may include other professionals ~~by conducting~~
 619 ~~state and federal records checks, including, when feasible, the~~
 620 ~~records of the Department of Corrections, on the parents, legal~~
 621 ~~custodians, or caregivers, and any other persons in the same~~
 622 ~~household. This information shall be used solely for purposes~~
 623 ~~supporting the detection, apprehension, prosecution, pretrial~~
 624 ~~release, posttrial release, or rehabilitation of criminal~~
 625 ~~offenders or persons accused of the crimes of child abuse,~~
 626 ~~abandonment, or neglect and shall not be further disseminated or~~
 627 ~~used for any other purpose. The department's child protection~~
 628 ~~investigators are hereby designated a criminal justice agency~~
 629 ~~for the purpose of accessing criminal justice information to be~~
 630 ~~used for enforcing this state's laws concerning the crimes of~~
 631 ~~child abuse, abandonment, and neglect. This information shall be~~
 632 ~~used solely for purposes supporting the detection, apprehension,~~
 633 ~~prosecution, pretrial release, posttrial release, or~~
 634 ~~rehabilitation of criminal offenders or persons accused of the~~
 635 ~~crimes of child abuse, abandonment, or neglect and may not be~~
 636 ~~further disseminated or used for any other purpose.~~

637 6.4- Document the present and impending dangers Determine
 638 the ~~immediate and long-term risk to each child based on the~~

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639 identification of inadequate protective capacity through
640 utilization of a standardized safety risk assessment instrument
641 instruments.

642 (b) Upon completion of the immediate safety assessment, the
643 department shall determine the additional activities necessary
644 to assess impending dangers, if any, and close the
645 investigation.

646 ~~5. Based on the information obtained from available~~
647 ~~sources, complete the risk assessment instrument within 48 hours~~
648 ~~after the initial contact and, if needed, develop a case plan.~~

649 ~~(c) 6. For each report received from the central abuse~~
650 ~~hotline, the department or the sheriff providing child~~
651 ~~protective investigative services under s. 39.3065, shall~~
652 ~~determine the protective, treatment, and ameliorative services~~
653 ~~necessary to safeguard and ensure the child's safety and well-~~
654 ~~being and development, and cause the delivery of those services~~
655 ~~through the early intervention of the department or its agent.~~
656 ~~As applicable, The training provided to staff members who~~
657 ~~conduct child protective investigators investigations must~~
658 ~~inform parents and caregivers include instruction on how and~~
659 ~~when to use the injunction process under s. 39.504 or s. 741.30~~
660 ~~to remove a perpetrator of domestic violence from the home as an~~
661 ~~intervention to protect the child.~~

662 1. If the department or the sheriff providing child
663 protective investigative services determines that the interests
664 of the child and the public will be best served by providing the
665 child care or other treatment voluntarily accepted by the child
666 and the parents or legal custodians, the parent or legal
667 custodian and child may be referred for such care, case

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668 management, or other community resources.

669 2. If the department or the sheriff providing child
670 protective investigative services determines that the child is
671 in need of protection and supervision, the department may file a
672 petition for dependency.

673 3. If a petition for dependency is not being filed by the
674 department, the person or agency originating the report shall be
675 advised of the right to file a petition pursuant to this part.

676 ~~(e) The determination that a report requires an~~
677 ~~investigation as provided in this subsection and does not~~
678 ~~require an enhanced onsite child protective investigation~~
679 ~~pursuant to subsection (11) must be approved in writing by the~~
680 ~~supervisor with documentation specifying why additional~~
681 ~~investigative activities are not necessary.~~

682 ~~(d) A report that meets the criteria specified in this~~
683 ~~subsection is not precluded from further investigative~~
684 ~~activities. At any time it is determined that additional~~
685 ~~investigative activities are necessary for the safety of the~~
686 ~~child, such activities shall be conducted.~~

687 ~~(10)-(11) (a) The department's training program for staff~~
688 ~~responsible for responding to reports accepted by the central~~
689 ~~abuse hotline must also ensure that child protective responders:~~

690 1. Know how to fully inform parents or legal custodians of
691 their rights and options, including opportunities for audio or
692 video recording of child protective responder interviews with
693 parents or legal custodians or children.

694 2. Know how and when to use the injunction process under s.
695 39.504 or s. 741.30 to remove a perpetrator of domestic violence
696 from the home as an intervention to protect the child.

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697 (b) To enhance the skills of individual staff members and
 698 to improve the region's and district's overall child protection
 699 system, the department's training program at the regional and
 700 district levels must include results of qualitative reviews of
 701 child protective investigation cases handled within the region
 702 or district in order to identify weaknesses as well as examples
 703 of effective interventions which occurred at each point in the
 704 case. For each report that meets one or more of the following
 705 criteria, the department shall perform an enhanced onsite child
 706 protective investigation:

- 707 1. Any allegation that involves physical abuse, sexual
- 708 abuse, domestic violence, substance abuse or substance exposure,
- 709 medical neglect, a child younger than 3 years of age, or a child
- 710 who is disabled or lacks communication skills.
- 711 2. Any report that involves an individual who has been the
- 712 subject of a prior report containing some indicators or verified
- 713 findings of abuse, neglect, or abandonment.
- 714 3. Any report that does not contain compelling evidencee
- 715 that the maltreatment did not occur.
- 716 4. Any report that does not meet the criteria for an onsite
- 717 child protective investigation as set forth in subsection (10).

718 ~~(b) The enhanced onsite child protective investigation~~
 719 ~~shall include, but is not limited to:~~

- 720 1. A face-to-face interview with the child, other siblings,
- 721 parents or legal custodians or caregivers, and other adults in
- 722 the household;
- 723 2. Collateral contacts;
- 724 3. Contact with the reporter as required by rule;
- 725 4. An onsite assessment of the child's residence in

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726 ~~accordance with paragraph (10)(b); and~~
 727 ~~5. An updated assessment.~~
 728 (c) For all reports received, detailed documentation is
 729 required for the investigative activities.

730 ~~(11)(12)~~ The department shall incorporate into its quality
 731 assurance program the monitoring of ~~the determination of~~ reports
 732 that receive a an onsite child protective investigation to
 733 determine the quality and timeliness of safety assessments,
 734 engagements with families, teamwork with other experts and
 735 professionals, and appropriate investigative activities that are
 736 uniquely tailored to the safety factors associated with each
 737 child and family and those that receive an enhanced onsite child
 738 protective investigation.

739 ~~(12)(13)~~ If the department or its agent is denied
 740 reasonable access to a child by the parents, legal custodians,
 741 or caregivers and the department deems that the best interests
 742 of the child so require, it shall seek an appropriate court
 743 order or other legal authority before ~~prior~~ to examining and
 744 interviewing the child.

745 ~~(13)(14)~~ Onsite visits and face-to-face interviews with the
 746 child or family shall be unannounced unless it is determined by
 747 the department or its agent or contract provider that such
 748 unannounced visit would threaten the safety of the child.

749 ~~(14)(15)~~ (a) If the department or its agent determines that
 750 a child requires immediate or long-term protection through:
 751 1. Medical or other health care; or
 752 2. Homemaker care, day care, protective supervision, or
 753 other services to stabilize the home environment, including
 754 intensive family preservation services through the Intensive

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755 Crisis Counseling Program,

756

757 such services shall first be offered for voluntary acceptance
 758 unless there are high-risk factors that may impact the ability
 759 of the parents or legal custodians to exercise judgment. Such
 760 factors may include the parents' or legal custodians' young age
 761 or history of substance abuse or domestic violence.

762 (b) The parents or legal custodians shall be informed of
 763 the right to refuse services, as well as the responsibility of
 764 the department to protect the child regardless of the acceptance
 765 or refusal of services. If the services are refused, a
 766 collateral contact ~~required under subparagraph (11)(b)2.~~ shall
 767 include a relative, if the protective investigator has knowledge
 768 of and the ability to contact a relative. If the services are
 769 refused and the department deems that the child's need for
 770 protection so requires, the department shall take the child into
 771 protective custody or petition the court as provided in this
 772 chapter. At any time after the commencement of a protective
 773 investigation, a relative may submit in writing to the
 774 protective investigator or case manager a request to receive
 775 notification of all proceedings and hearings in accordance with
 776 s. 39.502. The request shall include the relative's name,
 777 address, and phone number and the relative's relationship to the
 778 child. The protective investigator or case manager shall forward
 779 such request to the attorney for the department. The failure to
 780 provide notice to either a relative who requests it pursuant to
 781 this subsection or to a relative who is providing out-of-home
 782 care for a child ~~may shall~~ not result in any previous action of
 783 the court at any stage or proceeding in dependency or

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784 termination of parental rights under any part of this chapter
 785 being set aside, reversed, modified, or in any way changed
 786 absent a finding by the court that a change is required in the
 787 child's best interests.

788 (c) The department, in consultation with the judiciary,
 789 shall adopt by rule criteria that are factors requiring that the
 790 department take the child into custody, petition the court as
 791 provided in this chapter, or, if the child is not taken into
 792 custody or a petition is not filed with the court, conduct an
 793 administrative review. If after an administrative review the
 794 department determines not to take the child into custody or
 795 petition the court, the department shall document the reason for
 796 its decision in writing and include it in the investigative
 797 file. For all cases that were accepted by the local law
 798 enforcement agency for criminal investigation pursuant to
 799 subsection (2), the department must include in the file written
 800 documentation that the administrative review included input from
 801 law enforcement. In addition, for all cases that must be
 802 referred to child protection teams pursuant to s. 39.303(2) and
 803 (3), the file must include written documentation that the
 804 administrative review included the results of the team's
 805 evaluation. Factors that must be included in the development of
 806 the rule include noncompliance with the case plan developed by
 807 the department, or its agent, and the family under this chapter
 808 and prior abuse reports with findings that involve the child or
 809 caregiver.

810 ~~(15)(16)~~ When a child is taken into custody pursuant to
 811 this section, the authorized agent of the department shall
 812 request that the child's parent, caregiver, or legal custodian

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813 disclose the names, relationships, and addresses of all parents
814 and prospective parents and all next of kin, so far as are
815 known.

816 ~~(16)-(17)~~ The department shall complete its protective
817 investigation within 60 days after receiving the initial report,
818 unless:

819 (a) There is also an active, concurrent criminal
820 investigation that is continuing beyond the 60-day period and
821 the closure of the protective investigation may compromise
822 successful criminal prosecution of the child abuse or neglect
823 case, in which case the closure date shall coincide with the
824 closure date of the criminal investigation and any resulting
825 legal action.

826 (b) In child death cases, the final report of the medical
827 examiner is necessary for the department to close its
828 investigation and the report has not been received within the
829 60-day period, in which case the report closure date shall be
830 extended to accommodate the report.

831 (c) A child who is necessary to an investigation has been
832 declared missing by the department, a law enforcement agency, or
833 a court, in which case the 60-day period shall be extended until
834 the child has been located or until sufficient information
835 exists to close the investigation despite the unknown location
836 of the child.

837 ~~(17)-(18)~~ Immediately upon learning during the course of an
838 investigation that:

839 (a) The immediate safety or well-being of a child is
840 endangered;

841 (b) The family is likely to flee;

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842 (c) A child died as a result of abuse, abandonment, or
843 neglect;

844 (d) A child is a victim of aggravated child abuse as
845 defined in s. 827.03; or

846 (e) A child is a victim of sexual battery or of sexual
847 abuse,

848
849 the department shall ~~orally~~ notify the jurisdictionally
850 responsible state attorney, and county sheriff's office or local
851 police department, and, within 3 working days, transmit a full
852 written report to those agencies. The law enforcement agency
853 shall review the report and determine whether a criminal
854 investigation needs to be conducted and shall assume lead
855 responsibility for all criminal fact-finding activities. A
856 criminal investigation shall be coordinated, whenever possible,
857 with the child protective investigation of the department. Any
858 interested person who has information regarding an offense
859 described in this subsection may forward a statement to the
860 state attorney as to whether prosecution is warranted and
861 appropriate.

862 ~~(18)-(19)~~ In a child protective investigation or a criminal
863 investigation, when the initial interview with the child is
864 conducted at school, the department or the law enforcement
865 agency may allow, notwithstanding ~~the provisions of s.~~
866 39.0132(4), a school staff member who is known by the child to
867 be present during the initial interview if:

868 (a) The department or law enforcement agency believes that
869 the school staff member could enhance the success of the
870 interview by his or her presence; and

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871 (b) The child requests or consents to the presence of the
872 school staff member at the interview.

873
874 School staff may be present only when authorized by this
875 subsection. Information received during the interview or from
876 any other source regarding the alleged abuse or neglect of the
877 child ~~is shall be~~ confidential and exempt from ~~the provisions of~~
878 s. 119.07(1), except as otherwise provided by court order. A
879 separate record of the investigation of the abuse, abandonment,
880 or neglect ~~may shall~~ not be maintained by the school or school
881 staff member. Violation of this subsection ~~is constitutes~~ a
882 misdemeanor of the second degree, punishable as provided in s.
883 775.082 or s. 775.083.

884 ~~(19)(20)~~ When a law enforcement agency conducts a criminal
885 investigation into allegations of child abuse, neglect, or
886 abandonment, photographs documenting the abuse or neglect shall
887 ~~will~~ be taken when appropriate.

888 ~~(20)(21)~~ Within 15 days after the case is reported to him
889 or her pursuant to this chapter, the state attorney shall report
890 his or her findings to the department and shall include in such
891 report a determination of whether or not prosecution is
892 justified and appropriate in view of the circumstances of the
893 specific case.

894 ~~(22) In order to enhance the skills of individual staff and~~
895 ~~to improve the district's overall child protection system, the~~
896 ~~department's training program at the district level must include~~
897 ~~periodic reviews of cases handled within the district in order~~
898 ~~to identify weaknesses as well as examples of effective~~
899 ~~interventions that occurred at each point in the case.~~

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900 ~~(21)(23)~~ When an investigation is closed and a person is
901 not identified as a caregiver responsible for the abuse,
902 neglect, or abandonment alleged in the report, the fact that the
903 person is named in some capacity in the report may not be used
904 in any way to adversely affect the interests of that person.
905 This prohibition applies to any use of the information in
906 employment screening, licensing, child placement, adoption, or
907 any other decisions by a private adoption agency or a state
908 agency or its contracted providers, except that a previous
909 report may be used to determine whether a child is safe and what
910 the known risk is to the child at any stage of a child
911 protection proceeding.

912 ~~(22)(24)~~ If, after having been notified of the requirement
913 to report a change in residence or location of the child to the
914 protective investigator, a parent or legal custodian causes the
915 child to move, or allows the child to be moved, to a different
916 residence or location, or if the child leaves the residence on
917 his or her own accord and the parent or legal custodian does not
918 notify the protective investigator of the move within 2 business
919 days, the child may be considered to be a missing child for the
920 purposes of filing a report with a law enforcement agency under
921 s. 937.021.

922 Section 7. Subsection (1) of section 39.302, Florida
923 Statutes, is amended to read:

924 39.302 Protective investigations of institutional child
925 abuse, abandonment, or neglect.—

926 (1) The department shall conduct a child protective
927 investigation of each report of institutional child abuse,
928 abandonment, or neglect. Upon receipt of a report that alleges

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929 that an employee or agent of the department, or any other entity
 930 or person covered by s. 39.01(33) or (47), acting in an official
 931 capacity, has committed an act of child abuse, abandonment, or
 932 neglect, the department shall initiate a child protective
 933 investigation within the timeframe established under s.
 934 39.201(5) and ~~orally~~ notify the appropriate state attorney, law
 935 enforcement agency, and licensing agency, which shall
 936 immediately conduct a joint investigation, unless independent
 937 investigations are more feasible. When conducting investigations
 938 ~~onsite~~ or having face-to-face interviews with the child,
 939 investigation visits shall be unannounced unless it is
 940 determined by the department or its agent that unannounced
 941 visits threaten the safety of the child. If a facility is exempt
 942 from licensing, the department shall inform the owner or
 943 operator of the facility of the report. Each agency conducting a
 944 joint investigation is entitled to full access to the
 945 information gathered by the department in the course of the
 946 investigation. A protective investigation must include an
 947 interview with the child's parent or legal guardian ~~an onsite~~
 948 ~~visit of the child's place of residence~~. The department shall
 949 make a full written report to the state attorney within 3
 950 working days after making the oral report. A criminal
 951 investigation shall be coordinated, whenever possible, with the
 952 child protective investigation of the department. Any interested
 953 person who has information regarding the offenses described in
 954 this subsection may forward a statement to the state attorney as
 955 to whether prosecution is warranted and appropriate. Within 15
 956 days after the completion of the investigation, the state
 957 attorney shall report the findings to the department and shall

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958 include in the report a determination of whether or not
 959 prosecution is justified and appropriate in view of the
 960 circumstances of the specific case.
 961 Section 8. Subsection (2) of section 39.307, Florida
 962 Statutes, is amended to read:
 963 39.307 Reports of child-on-child sexual abuse.—
 964 (2) The department, contracted sheriff's office providing
 965 protective investigation services, or contracted case management
 966 personnel responsible for providing services ~~District staff~~, at
 967 a minimum, shall adhere to the following procedures:
 968 (a) The purpose of the response to a report alleging
 969 juvenile sexual abuse behavior shall be explained to the
 970 caregiver.
 971 1. The purpose of the response shall be explained in a
 972 manner consistent with legislative purpose and intent provided
 973 in this chapter.
 974 2. The name and office telephone number of the person
 975 responding shall be provided to the caregiver of the alleged
 976 juvenile sexual offender or child who has exhibited
 977 inappropriate sexual behavior and the victim's caregiver.
 978 3. The possible consequences of the department's response,
 979 including outcomes and services, shall be explained to the
 980 caregiver of the alleged juvenile sexual offender or child who
 981 has exhibited inappropriate sexual behavior and the victim's
 982 caregiver.
 983 (b) The caregiver of the alleged juvenile sexual offender
 984 or child who has exhibited inappropriate sexual behavior and the
 985 victim's caregiver shall be involved to the fullest extent
 986 possible in determining the nature of the sexual behavior

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987 ~~concerns allegation~~ and the nature of any problem or risk to
988 other children.

989 (c) The assessment of risk and the perceived treatment
990 needs of the alleged juvenile sexual offender or child who has
991 exhibited inappropriate sexual behavior, the victim, and
992 respective caregivers shall be conducted by the district staff,
993 the child protection team of the Department of Health, and other
994 providers under contract with the department to provide services
995 to the caregiver of the alleged offender, the victim, and the
996 victim's caregiver.

997 (d) The assessment shall be conducted in a manner that is
998 sensitive to the social, economic, and cultural environment of
999 the family.

1000 (e) If necessary, the child protection team of the
1001 Department of Health shall conduct a physical examination of the
1002 victim, which is sufficient to meet forensic requirements.

1003 (f) Based on the information obtained from the alleged
1004 juvenile sexual offender or child who has exhibited
1005 inappropriate sexual behavior, his or her caregiver, the victim,
1006 and the victim's caregiver, an assessment of service and
1007 treatment needs ~~report~~ must be completed ~~within 7 days~~ and, if
1008 needed, a case plan developed within 30 days.

1009 (g) The department shall classify the outcome of the report
1010 as follows:

1011 1. Report closed. Services were not offered because the
1012 department determined that there was no basis for intervention.

1013 2. Services accepted by alleged juvenile sexual offender.
1014 Services were offered to the alleged juvenile sexual offender or
1015 child who has exhibited inappropriate sexual behavior and

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1016 accepted by the caregiver.

1017 3. Report closed. Services were offered to the alleged
1018 juvenile sexual offender or child who has exhibited
1019 inappropriate sexual behavior, but were rejected by the
1020 caregiver.

1021 4. Notification to law enforcement. The risk to the
1022 victim's safety and well-being cannot be reduced by the
1023 provision of services or the caregiver rejected services, and
1024 notification of the alleged delinquent act or violation of law
1025 to the appropriate law enforcement agency was initiated.

1026 5. Services accepted by victim. Services were offered to
1027 the victim and accepted by the caregiver.

1028 6. Report closed. Services were offered to the victim but
1029 were rejected by the caregiver.

1030 Section 9. Section 39.504, Florida Statutes, is amended to
1031 read:

1032 39.504 Injunction pending disposition of petition;
1033 penalty.—

1034 (1) At any time after a protective investigation has been
1035 initiated pursuant to part III of this chapter, the court, upon
1036 the request of the department, a law enforcement officer, the
1037 state attorney, or other responsible person, or upon its own
1038 motion, may, if there is reasonable cause, issue an injunction
1039 to prevent any act of child abuse. Reasonable cause for the
1040 issuance of an injunction exists if there is evidence of child
1041 abuse or if there is a reasonable likelihood of such abuse
1042 occurring based upon a recent overt act or failure to act.

1043 (2) The petitioner seeking the injunction shall file a
1044 verified petition, or a petition along with an affidavit,

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1045 setting forth the specific actions by the alleged offender from
 1046 which the child must be protected and all remedies sought. Upon
 1047 filing the petition, the court shall set a hearing to be held at
 1048 the earliest possible time. Pending the hearing, the court may
 1049 issue a temporary ex parte injunction, with verified pleadings
 1050 or affidavits as evidence. The temporary ex parte injunction
 1051 pending a hearing is effective for up to 15 days and the hearing
 1052 must be held within that period unless continued for good cause
 1053 shown, which may include obtaining service of process, in which
 1054 case the temporary ex parte injunction shall be extended for the
 1055 continuance period. The hearing may be held sooner if the
 1056 alleged offender has received reasonable notice. Notice shall be
 1057 provided to the parties as set forth in the Florida Rules of
 1058 Juvenile Procedure, unless the child is reported to be in
 1059 imminent danger, in which case the court may issue an injunction
 1060 immediately. A judge may issue an emergency injunction pursuant
 1061 to this section without notice if the court is closed for the
 1062 transaction of judicial business. If an immediate injunction is
 1063 issued, the court must hold a hearing on the next day of
 1064 judicial business to dissolve the injunction or to continue or
 1065 modify it in accordance with this section.

1066 (3) Before the hearing, the alleged offender must be
 1067 personally served with a copy of the petition, all other
 1068 pleadings related to the petition, a notice of hearing, and, if
 1069 one has been entered, the temporary injunction. Following the
 1070 hearing, the court may enter a final injunction. The court may
 1071 grant a continuance of the hearing at any time for good cause
 1072 shown by any party. If a temporary injunction has been entered,
 1073 it shall be continued during the continuance.

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1074 ~~(4)(3)~~ If an injunction is issued under this section, the
 1075 primary purpose of the injunction must be to protect and promote
 1076 the best interests of the child, taking the preservation of the
 1077 child's immediate family into consideration.
 1078 (a) The injunction applies ~~shall apply~~ to the alleged or
 1079 actual offender in a case of child abuse or acts of domestic
 1080 violence. The conditions of the injunction shall be determined
 1081 by the court, which ~~conditions~~ may include ordering the alleged
 1082 or actual offender to:
 1083 1. Refrain from further abuse or acts of domestic violence.
 1084 2. Participate in a specialized treatment program.
 1085 3. Limit contact or communication with the child victim,
 1086 other children in the home, or any other child.
 1087 4. Refrain from contacting the child at home, school, work,
 1088 or wherever the child may be found.
 1089 5. Have limited or supervised visitation with the child.
 1090 ~~6. Pay temporary support for the child or other family~~
 1091 ~~members; the costs of medical, psychiatric, and psychological~~
 1092 ~~treatment for the child incurred as a result of the offenses;~~
 1093 ~~and similar costs for other family members.~~
 1094 ~~6.7.~~ Vacate the home in which the child resides.
 1095 (b) Upon proper pleading, the court may award the following
 1096 relief in a temporary ex parte or final injunction ~~If the intent~~
 1097 ~~of the injunction is to protect the child from domestic~~
 1098 ~~violence, the conditions may also include:~~
 1099 1. ~~Awarding the~~ Exclusive use and possession of the
 1100 dwelling to the caregiver or exclusion of ~~excluding~~ the alleged
 1101 or actual offender from the residence of the caregiver.
 1102 2. ~~Awarding temporary custody of the child to the~~

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1103 ~~caregiver-~~1104 2.3. Establishing Temporary support for the child or other
1105 family members.1106 3. The costs of medical, psychiatric, and psychological
1107 treatment for the child incurred due to the abuse, and similar
1108 costs for other family members.1109
1110 This paragraph does not preclude ~~an the~~ adult victim of domestic
1111 violence from seeking protection for himself or herself under s.
1112 741.30.1113 (c) The terms of the final injunction shall remain in
1114 effect until modified or dissolved by the court. The petitioner,
1115 respondent, or caregiver may move at any time to modify or
1116 dissolve the injunction. Notice of hearing on the motion to
1117 modify or dissolve the injunction must be provided to all
1118 parties, including the department. The injunction is valid and
1119 enforceable in all counties in the state.1120 (5)(4) Service of process on the respondent shall be
1121 carried out pursuant to s. 741.30. The department shall deliver
1122 a copy of any injunction issued pursuant to this section to the
1123 protected party or to a parent, caregiver, or individual acting
1124 in the place of a parent who is not the respondent. Law
1125 enforcement officers may exercise their arrest powers as
1126 provided in s. 901.15(6) to enforce the terms of the injunction.1127 (6)(5) Any person who fails to comply with an injunction
1128 issued pursuant to this section commits a misdemeanor of the
1129 first degree, punishable as provided in s. 775.082 or s.
1130 775.083.1131 (7) The person against whom an injunction is entered under

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1132 this section does not automatically become a party to a
1133 subsequent dependency action concerning the same child.1134 Section 10. Paragraph (r) of subsection (2) of section
1135 39.521, Florida Statutes, is amended to read:

1136 39.521 Disposition hearings; powers of disposition.-

1137 (2) The predisposition study must provide the court with
1138 the following documented information:1139 (r) If the child has been removed from the home and will be
1140 remaining with a relative, parent, or other adult approved by
1141 the court, a home study report concerning the proposed placement
1142 shall be included in the predisposition report. ~~Before~~ Prior to
1143 recommending to the court any out-of-home placement for a child
1144 other than placement in a licensed shelter or foster home, the
1145 department shall conduct a study of the home of the proposed
1146 legal custodians, which must include, at a minimum:1147 1. An interview with the proposed legal custodians to
1148 assess their ongoing commitment and ability to care for the
1149 child.1150 2. Records checks through the State Automated Child Welfare
1151 Information System (SACWIS) ~~Florida Abuse Hotline Information~~
1152 ~~System (FAHIS)~~, and local and statewide criminal and juvenile
1153 records checks through the Department of Law Enforcement, on all
1154 household members 12 years of age or older. In addition, the
1155 fingerprints of any household members who are 18 years of age or
1156 older may be submitted to the Department of Law Enforcement for
1157 processing and forwarding to the Federal Bureau of Investigation
1158 for state and national criminal history information. The
1159 department has the discretion to request State Automated Child
1160 Welfare Information System (SACWIS) and local, statewide, and

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1161 national criminal history checks and fingerprinting of any other
 1162 visitor to the home who is made known to the department and any
 1163 other persons made known to the department who are frequent
 1164 visitors in the home. Out-of-state criminal records checks must
 1165 be initiated for any individual ~~designated above~~ who has resided
 1166 in a state other than Florida ~~if provided~~ that state's laws
 1167 allow the release of these records. The out-of-state criminal
 1168 records must be filed with the court within 5 days after receipt
 1169 by the department or its agent.

1170 3. An assessment of the physical environment of the home.

1171 4. A determination of the financial security of the
 1172 proposed legal custodians.

1173 5. A determination of suitable child care arrangements if
 1174 the proposed legal custodians are employed outside of the home.

1175 6. Documentation of counseling and information provided to
 1176 the proposed legal custodians regarding the dependency process
 1177 and possible outcomes.

1178 7. Documentation that information regarding support
 1179 services available in the community has been provided to the
 1180 proposed legal custodians.

1181 The department ~~may shall~~ not place the child or continue the
 1182 placement of the child in a home under shelter or
 1183 postdisposition placement if the results of the home study are
 1184 unfavorable, unless the court finds that this placement is in
 1185 the child's best interest.

1186 Any other relevant and material evidence, including other
 1187 written or oral reports, may be received by the court in its

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1190 effort to determine the action to be taken with regard to the
 1191 child and may be relied upon to the extent of its probative
 1192 value, even though not competent in an adjudicatory hearing.
 1193 Except as otherwise specifically provided, nothing in this
 1194 section prohibits the publication of proceedings in a hearing.

1195 Section 11. Subsections (2) and (4) of section 39.6011,
 1196 Florida Statutes, are amended to read:

1197 39.6011 Case plan development.—

1198 (2) The case plan must be written simply and clearly in
 1199 English and, if English is not the principal language of the
 1200 child's parent, to the extent possible in the parent's principal
 1201 language. Each case plan must contain:

1202 (a) A description of the identified problem being
 1203 addressed, including the parent's behavior or acts resulting in
 1204 risk to the child and the reason for the intervention by the
 1205 department.

1206 (b) The permanency goal.

1207 (c) If concurrent planning is being used, a description of
 1208 the permanency goal of reunification with the parent or legal
 1209 custodian in addition to a description of one of the remaining
 1210 permanency goals described in s. 39.01.

1211 1. If a child has not been removed from a parent, but is
 1212 found to be dependent, even if adjudication of dependency is
 1213 withheld, the court may leave the child in the current placement
 1214 with maintaining and strengthening the placement as a permanency
 1215 option.

1216 2. If a child has been removed from a parent and is placed
 1217 with a parent from whom the child was not removed, the court may
 1218 leave the child in the placement with the parent from whom the

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1219 child was not removed with maintaining and strengthening the
 1220 placement as a permanency option.

1221 3. If a child has been removed from a parent and is
 1222 subsequently reunified with that parent, the court may leave the
 1223 child with that parent with maintaining and strengthening the
 1224 placement as a permanency option.

1225 (d) The date the compliance period expires. The case plan
 1226 must be limited to as short a period as possible for
 1227 accomplishing its provisions. The plan's compliance period
 1228 expires no later than 12 months after the date the child was
 1229 initially removed from the home, the child was adjudicated
 1230 dependent, or the date the case plan was accepted by the court,
 1231 whichever occurs first sooner.

1232 (e) A written notice to the parent that failure of the
 1233 parent to substantially comply with the case plan may result in
 1234 the termination of parental rights, and that a material breach
 1235 of the case plan may result in the filing of a petition for
 1236 termination of parental rights sooner than the compliance period
 1237 set forth in the case plan.

1238 (4) The case plan must describe:

1239 (a) The role of the foster parents or legal custodians when
 1240 developing the services that are to be provided to the child,
 1241 foster parents, or legal custodians;

1242 (b) The responsibility of the case manager to forward a
 1243 relative's request to receive notification of all proceedings
 1244 and hearings submitted pursuant to s. 39.301(14)(b)
 1245 ~~39.301(15)(b)~~ to the attorney for the department;

1246 (c) The minimum number of face-to-face meetings to be held
 1247 each month between the parents and the department's family

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1248 services counselors to review the progress of the plan, to
 1249 eliminate barriers to progress, and to resolve conflicts or
 1250 disagreements; and

1251 (d) The parent's responsibility for financial support of
 1252 the child, including, but not limited to, health insurance and
 1253 child support. The case plan must list the costs associated with
 1254 any services or treatment that the parent and child are expected
 1255 to receive which are the financial responsibility of the parent.
 1256 The determination of child support and other financial support
 1257 shall be made independently of any determination of indigency
 1258 under s. 39.013.

1259 Section 12. Subsection (1) of section 39.621, Florida
 1260 Statutes, is amended to read:

1261 39.621 Permanency determination by the court.—

1262 (1) Time is of the essence for permanency of children in
 1263 the dependency system. A permanency hearing must be held no
 1264 later than 12 months after the date the child was removed from
 1265 the home or within no later than 30 days after a court
 1266 determines that reasonable efforts to return a child to either
 1267 parent are not required, whichever occurs first. The purpose of
 1268 the permanency hearing is to determine when the child will
 1269 achieve the permanency goal or whether modifying the current
 1270 goal is in the best interest of the child. A permanency hearing
 1271 must be held at least every 12 months for any child who
 1272 continues to be supervised by ~~receive supervision from~~ the
 1273 department or awaits adoption.

1274 Section 13. Paragraph (b) of subsection (3), subsection
 1275 (6), and paragraph (e) of subsection (10) of section 39.701,
 1276 Florida Statutes, are amended to read:

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1277 39.701 Judicial review.-

1278 (3)

1279 (b) If the citizen review panel recommends extending the
1280 goal of reunification for any case plan beyond 12 months from
1281 the date the child was removed from the home, ~~or~~ the case plan
1282 was adopted, or the child was adjudicated dependent, whichever
1283 date came first, the court must schedule a judicial review
1284 hearing to be conducted by the court within 30 days after
1285 receiving the recommendation from the citizen review panel.

1286 (6) The attorney for the department shall notify a relative
1287 who submits a request for notification of all proceedings and
1288 hearings pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~. The notice
1289 shall include the date, time, and location of the next judicial
1290 review hearing.

1291 (10)

1292 (e) Within ~~no later than~~ 6 months after the date that the
1293 child was placed in shelter care, the court shall conduct a
1294 judicial review hearing to review the child's permanency goal as
1295 identified in the case plan. At the hearing the court shall make
1296 findings regarding the likelihood of the child's reunification
1297 with the parent or legal custodian within 12 months after the
1298 removal of the child from the home. ~~If, at this hearing,~~ the
1299 court makes a written finding that it is not likely that the
1300 child will be reunified with the parent or legal custodian
1301 within 12 months after the child was removed from the home, the
1302 department must file with the court, and serve on all parties, a
1303 motion to amend the case plan under s. 39.6013 and declare that
1304 it will use concurrent planning for the case plan. The
1305 department must file the motion within ~~no later than~~ 10 business

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

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1306 days after receiving the written finding of the court. The
1307 department must attach the proposed amended case plan to the
1308 motion. If concurrent planning is already being used, the case
1309 plan must document the efforts the department is taking to
1310 complete the concurrent goal.

1311 Section 14. Subsection (1) of section 39.8055, Florida
1312 Statutes, is amended to read:

1313 39.8055 Requirement to file a petition to terminate
1314 parental rights; exceptions.-

1315 (1) The department shall file a petition to terminate
1316 parental rights within 60 days after any of the following if:

1317 (a) ~~The~~ At the time of the 12-month judicial review
1318 ~~hearing,~~ a child is not returned to the physical custody of the
1319 parents 12 months after the child was sheltered or adjudicated
1320 dependent, whichever occurs first;

1321 (b) A petition for termination of parental rights has not
1322 otherwise been filed, and the child has been in out-of-home care
1323 under the responsibility of the state for 12 of the most recent
1324 22 months, calculated on a cumulative basis, but not including
1325 any trial home visits or time during which the child was a
1326 runaway;

1327 (c) A parent has been convicted of the murder,
1328 manslaughter, aiding or abetting the murder, or conspiracy or
1329 solicitation to murder the other parent or another child of the
1330 parent, or a felony battery that resulted in serious bodily
1331 injury to the child or to another child of the parent; or

1332 (d) A court determines that reasonable efforts to reunify
1333 the child and parent are not required.

1334 Section 15. Paragraphs (d), (e), and (k) of subsection (1)

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1335 and subsection (2) of section 39.806, Florida Statutes, are
1336 amended to read:

1337 39.806 Grounds for termination of parental rights.—

1338 (1) Grounds for the termination of parental rights may be
1339 established under any of the following circumstances:

1340 (d) When the parent of a child is incarcerated ~~in a state~~
1341 ~~or federal correctional institution and either:~~

1342 1. The period of time for which the parent is expected to
1343 be incarcerated will constitute a significant substantial
1344 portion of the child's minority. When determining whether the
1345 period of time is significant, the court shall consider the
1346 child's age and the child's need for a permanent and stable
1347 home. The period of time begins on the date that the parent
1348 enters into incarceration period of time before the child will
1349 attain the age of 18 years;

1350 2. The incarcerated parent has been determined by the court
1351 to be a violent career criminal as defined in s. 775.084, a
1352 habitual violent felony offender as defined in s. 775.084, or a
1353 sexual predator as defined in s. 775.21; has been convicted of
1354 first degree or second degree murder in violation of s. 782.04
1355 or a sexual battery that constitutes a capital, life, or first
1356 degree felony violation of s. 794.011; or has been convicted of
1357 an offense in another jurisdiction which is substantially
1358 similar to one of the offenses listed in this paragraph. As used
1359 in this section, the term "substantially similar offense" means
1360 any offense that is substantially similar in elements and
1361 penalties to one of those listed in this subparagraph, and that
1362 is in violation of a law of any other jurisdiction, whether that
1363 of another state, the District of Columbia, the United States or

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1364 any possession or territory thereof, or any foreign
1365 jurisdiction; or

1366 3. The court determines by clear and convincing evidence
1367 that continuing the parental relationship with the incarcerated
1368 parent would be harmful to the child and, for this reason, that
1369 termination of the parental rights of the incarcerated parent is
1370 in the best interest of the child. When determining harm, the
1371 court shall consider the following factors:

1372 a. The age of the child;

1373 b. The relationship between the child and the parent;

1374 c. The nature of the parent's current and past provision
1375 for the child's developmental, cognitive, psychological, and
1376 physical needs;

1377 d. The parent's history of criminal behavior, which may
1378 include the frequency of incarceration and the unavailability of
1379 the parent to the child due to incarceration; and

1380 e. Any other factor the court deems relevant.

1381 (e) When a child has been adjudicated dependent, a case
1382 plan has been filed with the court, and:

1383 1. The child continues to be abused, neglected, or
1384 abandoned by the parent or parents. The failure of the parent or
1385 parents to substantially comply with the case plan for a period
1386 of 12 ~~9~~ months after an adjudication of the child as a dependent
1387 child or the child's placement into shelter care, whichever
1388 occurs first, constitutes evidence of continuing abuse, neglect,
1389 or abandonment unless the failure to substantially comply with
1390 the case plan was due to the parent's lack of financial
1391 resources or to the failure of the department to make reasonable
1392 efforts to reunify the parent and child. The 12-month ~~9-month~~

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1393 period begins to run only after the child's placement into
 1394 shelter care or the entry of a disposition order placing the
 1395 custody of the child with the department or a person other than
 1396 the parent and the court's approval of a case plan having the
 1397 goal of reunification with the parent, whichever occurs first;
 1398 or

1399 2. The parent or parents have materially breached the case
 1400 plan. Time is of the essence for permanency of children in the
 1401 dependency system. In order to prove the parent or parents have
 1402 materially breached the case plan, the court must find by clear
 1403 and convincing evidence that the parent or parents are unlikely
 1404 or unable to substantially comply with the case plan before time
 1405 to comply with the case plan expires.

1406 (k) A test administered at birth that indicated that the
 1407 child's blood, urine, or meconium contained any amount of
 1408 alcohol or a controlled substance or metabolites of such
 1409 substances, the presence of which was not the result of medical
 1410 treatment administered to the mother or the newborn infant, and
 1411 the biological mother of the child is the biological mother of
 1412 at least one other child who was adjudicated dependent after a
 1413 finding of harm to the child's health or welfare due to exposure
 1414 to a controlled substance or alcohol as defined in s.
 1415 39.01(32)(g), after which the biological mother had the
 1416 opportunity to participate in substance abuse treatment.

1417 (2) Reasonable efforts to preserve and reunify families are
 1418 not required if a court of competent jurisdiction has determined
 1419 that any of the events described in paragraphs (1)(b)-(d) or
 1420 (f)-(l) (i)-(l) have occurred.

1421 Section 16. The amendments made by this act to paragraph

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1422 (d) of subsection (1) of section 39.806, Florida Statutes, do
 1423 not apply to any cause of action that accrued before July 1,
 1424 2012.

1425 Section 17. Subsections (1) and (19) of section 39.502,
 1426 Florida Statutes, are amended to read:

1427 39.502 Notice, process, and service.—

1428 (1) Unless parental rights have been terminated, all
 1429 parents must be notified of all proceedings or hearings
 1430 involving the child. Notice in cases involving shelter hearings
 1431 and hearings resulting from medical emergencies must be that
 1432 most likely to result in actual notice to the parents. In all
 1433 other dependency proceedings, notice must be provided in
 1434 accordance with subsections (4)-(9), except when a relative
 1435 requests notification pursuant to s. 39.301(14)(b)
 1436 ~~39.301(15)(b)~~, in which case notice shall be provided pursuant
 1437 to subsection (19).

1438 (19) In all proceedings and hearings under this chapter,
 1439 the attorney for the department shall notify, orally or in
 1440 writing, a relative requesting notification pursuant to s.
 1441 39.301(14)(b) ~~39.301(15)(b)~~ of the date, time, and location of
 1442 such proceedings and hearings, and notify the relative that he
 1443 or she has the right to attend all subsequent proceedings and
 1444 hearings, to submit reports to the court, and to speak to the
 1445 court regarding the child, if the relative so desires. The court
 1446 has the discretion to release the attorney for the department
 1447 from notifying a relative who requested notification pursuant to
 1448 s. 39.301(14)(b) ~~39.301(15)(b)~~ if the relative's involvement is
 1449 determined to be impeding the dependency process or detrimental
 1450 to the child's well-being.

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1451 Section 18. Section 39.823, Florida Statutes, is amended to
1452 read:

1453 39.823 Guardian advocates for drug dependent newborns.—The
1454 Legislature finds that increasing numbers of drug dependent
1455 children are born in this state. Because of the parents'
1456 continued dependence upon drugs, the parents may temporarily
1457 leave their child with a relative or other adult or may have
1458 agreed to voluntary family services under s. 39.301(14)
1459 ~~39.301(15)~~. The relative or other adult may be left with a child
1460 who is likely to require medical treatment but for whom they are
1461 unable to obtain medical treatment. The purpose of this section
1462 is to provide an expeditious method for such relatives or other
1463 responsible adults to obtain a court order which allows them to
1464 provide consent for medical treatment and otherwise advocate for
1465 the needs of the child and to provide court review of such
1466 authorization.

1467 Section 19. Subsection (1) of section 39.828, Florida
1468 Statutes, is amended to read:

1469 39.828 Grounds for appointment of a guardian advocate.—

1470 (1) The court shall appoint the person named in the
1471 petition as a guardian advocate with all the powers and duties
1472 specified in s. 39.829 for an initial term of 1 year upon a
1473 finding that:

1474 (a) The child named in the petition is or was a drug
1475 dependent newborn as described in s. 39.01~~(32)~~~~(g)~~;

1476 (b) The parent or parents of the child have voluntarily
1477 relinquished temporary custody of the child to a relative or
1478 other responsible adult;

1479 (c) The person named in the petition to be appointed the

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1480 guardian advocate is capable of carrying out the duties as
1481 provided in s. 39.829; and

1482 (d) A petition to adjudicate the child dependent under this
1483 chapter has not been filed.

1484 Section 20. Subsection (3) of section 402.56, Florida
1485 Statutes, is amended to read:

1486 402.56 Children's cabinet; organization; responsibilities;
1487 annual report.—

1488 (3) ORGANIZATION.—There is created the Children and Youth
1489 Cabinet, which is a coordinating council as defined in s. 20.03.

1490 (a) The cabinet shall ensure that the public policy of this
1491 state relating to children and youth is developed to promote
1492 interdepartmental collaboration and program implementation in
1493 order that services designed for children and youth are planned,
1494 managed, and delivered in a holistic and integrated manner to
1495 improve the children's self-sufficiency, safety, economic
1496 stability, health, and quality of life.

1497 (b) The cabinet is created in the Executive Office of the
1498 Governor, which shall provide administrative support and service
1499 to the cabinet.

1500 (c) ~~The cabinet shall meet for its organizational session~~
1501 ~~no later than October 1, 2007. Thereafter, The cabinet shall~~
1502 ~~meet at least four six times each year in different regions of~~
1503 ~~the state in order to solicit input from the public and any~~
1504 ~~other individual offering testimony relevant to the issues~~
1505 ~~considered. Each meeting must include a public comment session.~~

1506 Section 21. 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)

21 9/2012

Meeting Date

Topic _____

Bill Number 2044
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

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Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1830

INTRODUCER: Senator Flores

SUBJECT: Landlords and Tenants

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes numerous changes to the Florida Residential Landlord and Tenant Act. Specifically, the bill makes the following changes:

- Specifies that the eviction procedures in the Act apply to eviction from a dwelling after a final judgment in foreclosure, ejectment, quiet title, partition, or other cause action in which a court awards possession of a dwelling unit.
- Provides that the eviction procedures in the Act apply to an eviction based on the nonpayment of fees due to a condominium, cooperative, or homeowners' association.
- Authorizes the eviction procedures under the Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant which describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the liability of the new owner for the tenant's deposit to 1-months rent.

- Relieves landlords of single-family homes and duplexes of the obligation to provide and maintain screens on windows.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Requires landlords to pay condominium, cooperative, or homeowners' association assessments.
- Provides that upon the re-occurrence of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to nonrenew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that weekends and holidays do not stay the applicable notice period.
- Specifies additional grounds for which a landlord may not retaliate against a tenant.
- Provides that a landlord is not required to notify a tenant of a mortgage default.
- Provides that a pending foreclosure action involving leased premises is not grounds for a tenant to terminate a lease.

The bill conforms statutory cross-references and makes other editorial changes.

This bill creates section 83.683, Florida Statutes.

This bill amends the following sections of the Florida Statutes: 83.41, 83.42, 83.48, 83.49, 83.50, 83.51, 83.56, 83.575, 83.58, 83.59, 83.60, 83.62, 83.63, and 83.64.

II. Present Situation:

Applicability of the Florida Residential Landlord and Tenant Act

Part II, ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.¹

The Act does not apply to:

- residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.²
- occupancy under a contract of sale of a dwelling unit or property of which it is a part.³
- transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.⁴
- occupancy by a holder of a proprietary lease in a cooperative apartment.⁵

¹ Section 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.

² Section 83.42(1), F.S.

³ Section 83.42(2), F.S.

⁴ Section 83.42(3), F.S.

⁵ Section 83.42(4), F.S.

- occupancy by an owner of a condominium unit.⁶

Attorney Fees

Under s. 83.48, F.S., in any civil action brought to enforce the provisions of a rental agreement or the Florida Residential Landlord and Tenant Act, the party in whose favor a judgment or decree has been rendered may recover reasonable costs, including attorney fees from the prevailing party. In an interpretation of s. 83.48, F.S., by the Third District Court of Appeal, the court held that the statute did not allow for the award of attorney fees in an action for damages for personal injuries resulting from a landlord's failure to maintain the rental premises.⁷

Advance Rent Payments

Section 83.49, F.S., specifies requirements for the landlord's duty to a tenant for deposit money or advance rent. "[T]he purpose of [s. 83.49(3)(a), F.S.] is to assure tenants that their security deposits will be returned expeditiously or they will be promptly notified otherwise."⁸

Section 83.49(3)(a), F.S., states:

[u]pon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of ___ upon your security deposit, due to ____ . It is sent to you as required by s. 83.49 (3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address) .

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

Section 83.49(3)(b), F.S., provides that:

[u]nless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant

⁶ Section 83.42(5), F.S.

⁷ *Gilbert v. Jabour*, 527 So. 2d 951 (Fla. 3d DCA 1988).

⁸ *See Durene v. Alcime*, 448 So. 2d 1208, 1210 (Fla. 3d DCA 1984).

within 30 days after the date of the notice of intention to impose a claim for damages.

Disclosure of Fire Protection

The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, must disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.⁹

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes.¹⁰ Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.¹¹

Unless otherwise agreed in writing, in addition to the requirements [described above], the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Functioning facilities for heat during winter, running water, and hot water.¹²

Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.¹³

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., establishes the circumstances under which the tenant or landlord may terminate a rental agreement. A tenant may be subject to eviction for monetary default or non-

⁹ Section 83.50(2), F.S.

¹⁰ Section 83.51(1)(a), F.S.

¹¹ Section 83.51(1)(b), F.S.

¹² Section 83.51(2)(a), F.S.

¹³ Section 83.51(2)(b), F.S.

monetary default. Section 83.56, F.S., recognizes two different categories of non-monetary default:

Noncurable Default

(2)(a) If such noncompliance is of a nature that the **tenant should not be given an opportunity to cure** it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises.¹⁴

Curable Default

(2)(b) If such noncompliance is of a nature that the **tenant should be given an opportunity to cure** it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.¹⁵

Termination of Rental Agreement - Waiver of Rent

If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of rent or possession of the premises, the landlord may terminate the rental agreement.¹⁶

If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, the landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance.¹⁷ The landlord does not waive his or her right to terminate the rental agreement or to bring a civil action for any subsequent or continuing noncompliance. If a landlord accepts a partial payment of rent from a tenant with full knowledge

¹⁴ Section 83.56(2)(a), F.S.

¹⁵ Section 83.56(2)(b), F.S.

¹⁶ Section 83.56(3), F.S.

¹⁷ Section 83.56(5), F.S.

that the payment is not for the full amount, the landlord waives the right to terminate the rental agreement or to bring a civil action.¹⁸

Termination of a Tenancy with a Specific Duration

A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement.¹⁹ Such a provision may not require more than 60 days' notice before vacating the premises.²⁰ A rental agreement having a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. To do so, the landlord must provide written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide the written notice within 15 days before the start of the notification period contained in the lease and the written notice must list all fees, penalties, and other charges applicable to the tenant.

Restoration of Possession to Landlord Upon Eviction

In an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises.²¹

Retaliatory Conduct

Section 83.64, F.S., prohibits a landlord from discriminatorily increasing a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. The tenant may raise the defense of retaliatory conduct if the tenant acts in good faith.

Rental Units or Parcels in Condominiums, Cooperatives, and Homeowners' Associations

If a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association.²² The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues the tenancy in the unit or parcel.

¹⁸ See *In re Sorrento's I, Inc.*, 195 B.R. 502, 504 (Bankruptcy. M.D. Fla. 1996).

¹⁹ Section 83.575(1), F.S.

²⁰ *Id.*

²¹ Section 83.62, F.S.

²² Sections 718.116(11)(a) and (b), 719.108(10)(a) and (b), and 720.3085(8)(a) and (b), F.S.

III. Effect of Proposed Changes:

Applicability of the Florida Residential Landlord and Tenant Act

The bill specifies that the eviction procedures in s. 83.62, F.S.,²³ apply to an eviction from a dwelling subsequent to a final judgment in foreclosure, ejectment, quiet title, partition, or other cause of action in which the court awards possession of a dwelling unit.

The eviction procedures in ss. 83.59,²⁴ 83.60,²⁵ 83.61,²⁶ 83.62, 83.625,²⁷ and 83.681, F.S.,²⁸ apply to eviction from a dwelling based on nonpayment of association fees required to be paid by the owner of the dwelling to a condominium, cooperative, or homeowners' association after demand. In such cases, the prevailing party in the litigation is considered a landlord for purposes of those sections. A prevailing party awarded possession of a dwelling unit shall be governed by s. 83.67(1), (5), (6), and (7), F.S.²⁹

The bill expands the application of the Florida Residential Landlord and Tenant Act to apply to lease-purchase agreements for residential properties which are not a "bona fide" contract of sale. The bill further defines a bona fide contract of sale as one in which at least one month's rent has

²³ Section 83.62(1), F.S., provides that in an action for possession of a dwelling unit, after entry of judgment in favor of the landlord, the clerk is required to issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.

²⁴ Under s. 83.59, F.S., a landlord, the landlord's attorney, or the landlord's agent applying for the removal of a tenant must file in the county court where the premises are located a complaint describing the dwelling unit and stating the facts that authorize its recovery. The landlord is entitled to the summary procedure in s. 51.011, F.S., and the court must advance the cause on the calendar. Section 83.59(2), F.S. The prevailing party is entitled to have judgment for costs and execution thereof.

²⁵ In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant must pay into the registry of the court the accrued rent as alleged in the complaint or determined by the court and the rent which accrues during the pendency of the proceeding, when due. Section 83.60(2), F.S. Failure of the tenant to pay the rent into the registry of the court constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. *Id.*

²⁶ "When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2), [F.S.], and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing." Section 83.61, F.S. "The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause." *Id.*

²⁷ "In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord." Section 83.625, F.S.

²⁸ "A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease [under applicable law], due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any provisions of the [Florida Residential Landlord and Tenant Act]." Section 83.681, F.S.

²⁹ A landlord of any dwelling unit governed by Florida Residential Landlord and Tenant Act may not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord. Section 83.67

been paid and the buyer has paid a deposit of at least 5 percent of the value of the property, or in which the buyer has paid at least 12 months' rent.

Attorney Fees

The bill provides that a right to attorney fees may not be waived in a lease agreement. In addition, the bill provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty under s. 83.51, F.S., regarding the landlord's obligation to maintain the premises. The limitation on the award of attorney fees in a personal injury action based on the failure of a landlord to maintain the leased premises appears codify the interpretation of that section by the Third District Court of Appeal in *Gilbert v. Jabour*.

Advance Rent Payments/Nonrefundable Deposits

The bill eliminates a requirement under s. 83.49(2), F.S., for a landlord to give to a tenant a copy of the law relating to security deposits and replaces it with another disclosure which states:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS AND NONREFUNDABLE DEPOSITS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

The bill allows the landlord to withdraw advance rents from the deposit account without notice and as the rents become due to the landlord. The bill also allows a landlord to transfer "nonrefundable deposits" to the landlord. However, the bill does not describe what constitutes a nonrefundable deposit. Such deposits appear to be more like a fee than a deposit.

Transfer of Deposits to New Owner or Manager

The bill creates a rebuttable presumption that the previous owner or manager of the property of the property has transferred any deposit to the new owner. However, the new owner's liability is limited to one month's rent.³⁰

³⁰ The amount could be at variance with the amount actually received from the previous owner or agent.

Disclosure of Fire Protection

The bill eliminates a disclosure requirement for landlords regarding the availability or lack of availability of fire protection in certain new construction. Current law requires the landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, to disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.³¹

Maintenance of Screens on Windows

The bill relieves landlords of single-family homes and duplexes of the obligation to provide and maintain screens on windows. The bill moves a landlord's mandatory obligation to maintain screens at the landlord's expense under from s. 83.51(1)(b), F.S., to s. 83.52(2)(a), F.S., where the maintenance of screens could be required of a tenant if the lease so provides.

Payment of Condominium, Cooperative, or Homeowners' Association Assessments

The bill requires the landlord to pay condominium, cooperative, or homeowners' association assessments. Under current law, "a [condominium] unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner."³² Under current law, "[w]hen authorized by the governing documents, the [homeowner's] association has a lien on each parcel to secure the payment of assessments and other amounts provided for by law." Current law authorizes cooperative associations to make and collect assessments and to lease, maintain, repair, and replace the common areas.³³

Termination of Rental Agreement- Noncompliance

In the event a notice of noncompliance has been previously delivered to a tenant giving the tenant an opportunity to cure a curable lease violation, the bill provides that upon re-occurrence of the noncompliance, the landlord is not required to provide an additional notice before instituting an eviction action.

Termination of Rental Agreement- Rent Waiver

The bill requires that after a landlord serves a tenant with a 3-day notice for failure to pay rent, the landlord may require payment of the rent to be in cash, money order, or certified funds. The bill also allows the landlord to demand "all moneys due," including late fees, to the landlord. However, beyond rent and late fees, the bill does not describe what could constitute "all moneys due." As a technical matter, the bill should be amended to conform the statutory form for the 3-day notice to replace the word "rent" with "all moneys due."

The bill provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease. The bill provides that a landlord does not waive

³¹ Section 83.50(2), F.S.

³² Section 718.116(1)(a), F.S.

³³ Section 719.104(5), F.S.

the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent if the landlord notifies the tenant that the landlord may seek payment of the remainder. Additionally, the bill increases the period to institute an action for possession of a rental unit for noncompliance before an exemption involving rent subsidies is waived to 90 days from 45 days.

Termination of a Tenancy with a Specific Duration

The bill provides that if a rental agreement has a requirement for a tenant to provide notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal requirement for the landlord to provide the same notice of an intent not to renew. If the landlord fails to give the tenant a timely notice of nonrenewal, the tenant may elect to continue the tenancy for up to 60 days after the tenant's receipt of the notice of nonrenewal.

Restoration of Possession to Landlord

Existing law requires an eviction notice to be posted on a rental property at least 24 hours before a sheriff may restore possession of the property to the landlord. The bill provides that weekends and holidays do not stay the 24-hour notice period. The bill revises procedures for the restoration of possession of a rental unit to a landlord to provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

The bill specifies two additional grounds for which a landlord may not retaliate against a tenant:

- The tenant has paid the rent to a condominium, cooperative, or homeowners' association after demand from the association.
- The tenant has exercised his or her rights under local, state, or federal fair housing laws.

Foreclosure of Leased Property

Under the bill, a landlord is not required to notify a tenant of a mortgage default. Additionally, a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease.

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:

The bill may make evictions or actions for possession of a residential dwelling unit faster and less costly in some circumstances.

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.



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LEGISLATIVE ACTION

Senate

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. .

House

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 67.

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

And the title is amended as follows:

Delete lines 3 - 5.

By Senator Flores

38-01304-12

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1 A bill to be entitled
 2 An act relating to landlords and tenants; amending s.
 3 83.41, F.S.; providing application of certain eviction
 4 procedures under part II of ch. 83, F.S., the "Florida
 5 Residential Landlord and Tenant Act"; amending s.
 6 83.42, F.S.; revising exclusions from application of
 7 the part; amending s. 83.48, F.S.; providing that the
 8 right to attorney fees may not be waived in a lease
 9 agreement; providing that attorney fees may not be
 10 awarded in a claim for personal injury damages based
 11 on a breach of duty of premises maintenance; amending
 12 s. 83.49, F.S.; revising and providing landlord
 13 disclosure requirements with respect to deposit money
 14 and advance rent; providing requirements for the
 15 disbursement of advance rents; providing a rebuttable
 16 presumption of receipt of security deposits and a
 17 limitation on liability with respect to such deposits;
 18 amending s. 83.50, F.S.; removing certain landlord
 19 disclosure requirements relating to fire protection;
 20 amending s. 83.51, F.S.; revising a landlord's
 21 obligation to maintain premises with respect to
 22 screens; requiring a landlord to pay assessments due
 23 to a condominium, cooperative, or homeowners'
 24 association; amending s. 83.56, F.S.; revising
 25 procedures for the termination of a rental agreement
 26 by a landlord; revising notice and payment procedures;
 27 providing that a landlord does not waive the right to
 28 terminate the rental agreement or to bring a civil
 29 action for noncompliance by accepting partial rent,

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

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30 subject to certain notice; increasing the period to
 31 institute an action before an exemption involving rent
 32 subsidies is waived; amending s. 83.575, F.S.;
 33 revising requirements for the termination of tenancy
 34 with specific duration to provide for reciprocal
 35 notice provisions in rental agreements; amending ss.
 36 83.58, 83.59, 83.60, and 83.63, F.S.; updating and
 37 conforming cross-references; making editorial changes;
 38 amending s. 83.62, F.S.; revising procedures for the
 39 restoration of possession to a landlord to provide
 40 that weekends and holidays do not stay the applicable
 41 notice period; amending s. 83.64, F.S.; providing
 42 examples of conduct for which the landlord may not
 43 retaliate; creating s. 83.683, F.S.; providing that a
 44 landlord is not required to notify a tenant of a
 45 mortgage default; providing that a pending foreclosure
 46 action involving the leased premises is not grounds
 47 for a tenant to terminate a lease; providing an
 48 effective date.

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

52 Section 1. Section 83.41, Florida Statutes, is amended to
 53 read:

54 83.41 Application.—

55 (1) This part applies to the rental of a dwelling unit.

56 (2) The eviction procedures in s. 83.62 apply to eviction
 57 from a dwelling subsequent to a final judgment in foreclosure,
 58 ejectment, quiet title, partition, or other cause of action in

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59 which the court awards possession of a dwelling unit. The
 60 eviction procedures in ss. 83.59, 83.60, 83.61, 83.62, 83.625,
 61 and 83.681 apply to eviction from a dwelling based on nonpayment
 62 of association fees required to be paid to a condominium,
 63 cooperative, or homeowners' association after demand. In such
 64 cases, the prevailing party in the litigation shall be
 65 considered a landlord for purposes of those sections. A
 66 prevailing party awarded possession of a dwelling unit shall be
 67 governed by s. 83.67(1), (5), (6), and (7).

68 Section 2. Subsection (2) of section 83.42, Florida
 69 Statutes, is amended to read:

70 83.42 Exclusions from application of part.—This part does
 71 not apply to:

72 (2) Occupancy under a bona fide contract of sale of a
 73 dwelling unit or the property of which it is a part. A bona fide
 74 contract of sale is one in which at least one month's rent has
 75 been paid and the buyer has paid a deposit of at least 5 percent
 76 of the value of the property, or in which the buyer has paid at
 77 least 12 months' rent.

78 Section 3. Section 83.48, Florida Statutes, is amended to
 79 read:

80 83.48 ~~Attorney~~ ~~Attorney's~~ fees.—In any civil action brought
 81 to enforce the provisions of the rental agreement or this part,
 82 the party in whose favor a judgment or decree has been rendered
 83 may recover reasonable court costs, including attorney
 84 attorney's fees, from the nonprevailing party. The right to
 85 attorney fees in this section may not be waived in a lease
 86 agreement. However, attorney fees may not be awarded under this
 87 section in a claim for personal injury damages based on a breach

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88 of duty under s. 83.51.

89 Section 4. Subsections (2), (3), and (7) of section 83.49,
 90 Florida Statutes, are amended to read:

91 83.49 Deposit money or advance rent; duty of landlord and
 92 tenant.—

93 (2) The landlord shall, in the lease agreement or within 30
 94 days ~~after~~ ~~of~~ receipt of advance rent or a security deposit,
 95 furnish ~~notify~~ the tenant in writing with a disclosure regarding
 96 of the manner in which the landlord is holding the advance rent
 97 or security deposit and the rate of interest, if any, which the
 98 tenant is to receive and the time of interest payments to the
 99 tenant. Such written notice shall:

100 (a) ~~Be given in person or by mail to the tenant.~~

101 (b) ~~State the name and address of the depository where the~~
 102 ~~advance rent or security deposit is being held, whether the~~
 103 ~~advance rent or security deposit is being held in a separate~~
 104 ~~account for the benefit of the tenant or is commingled with~~
 105 ~~other funds of the landlord, and, if commingled, whether such~~
 106 ~~funds are deposited in an interest-bearing account in a Florida~~
 107 ~~banking institution.~~

108 (c) ~~Include a copy of the provisions of subsection (3).~~

109
 110 Subsequent to providing such notice, if the landlord changes the
 111 manner or location in which he or she is holding the advance
 112 rent or security deposit, he or she shall notify the tenant
 113 within 30 days ~~after~~ ~~of~~ the change according to the provisions
 114 of paragraphs (a)-(d) herein set forth. The landlord is not
 115 required to give a new notice solely because the depository has
 116 merged with another financial institution, changed its name, or

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 117 transferred ownership to a different financial institution. This
 118 subsection does not apply to any landlord who rents fewer than
 119 five individual dwelling units. Failure to provide this notice
 120 ~~is shall~~ not be a defense to the payment of rent when due. Such
 121 written notice shall:

122 (a) Be given in person or by mail to the tenant;

123 (b) State the name and address of the depository where the
 124 advance rent or security deposit is being held, or state that
 125 the landlord has posted a surety bond as provided by law;

126 (c) State whether the tenant is entitled to interest on the
 127 deposit; and

128 (d) Include the following disclosure:

129
 130 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
 131 LANDLORD MAY TRANSFER ADVANCE RENTS AND NONREFUNDABLE
 132 DEPOSITS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND
 133 WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE
 134 LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN
 135 SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD
 136 MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE
 137 OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM
 138 AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE
 139 LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15
 140 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE
 141 LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE
 142 REMAINING DEPOSIT, IF ANY. IF YOU TIMELY OBJECT, THE
 143 LANDLORD MUST HOLD THE DEPOSIT AND EITHER YOU OR THE
 144 LANDLORD WILL HAVE TO FILE A LAWSUIT SO THAT THE COURT
 145 CAN RESOLVE THE DISPUTE.

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 146
 147 IF THE LANDLORD FAILS TO TIMELY SEND YOU NOTICE, THE
 148 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
 149 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
 150 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
 151 DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
 152 REFUND.
 153
 154 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
 155 BEFORE FILING A LAWSUIT. GENERALLY, THE WINNING PARTY
 156 IN ANY LAWSUIT BETWEEN YOU AND YOUR LANDLORD WILL BE
 157 AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING
 158 PARTY.
 159
 160 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
 161 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
 162 RIGHTS AND OBLIGATIONS.

163
 164 (3) The landlord may disburse advance rents from the
 165 deposit account to the landlord's benefit when the advance
 166 rental period commences and without notice to the tenant. The
 167 landlord may disburse a deposit designated as nonrefundable at
 168 the conclusion of the lease and without notice to the tenant.
 169 For all other deposits:

170 (a) Upon the vacating of the premises for termination of
 171 the lease, if the landlord does not intend to impose a claim on
 172 the security deposit, the landlord shall have 15 days to return
 173 the security deposit together with interest if otherwise
 174 required, or the landlord shall have 30 days to give the tenant

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 175 written notice by certified mail to the tenant's last known
 176 mailing address of his or her intention to impose a claim on the
 177 deposit and the reason for imposing the claim. The notice shall
 178 contain a statement in substantially the following form:
 179

180 This is a notice of my intention to impose a claim for
 181 damages in the amount of upon your security deposit, due to
 182 It is sent to you as required by s. 83.49(3), Florida
 183 Statutes. You are hereby notified that you must object in
 184 writing to this deduction from your security deposit within 15
 185 days from the time you receive this notice or I will be
 186 authorized to deduct my claim from your security deposit. Your
 187 objection must be sent to ...(landlord's address)....
 188

189 If the landlord fails to give the required notice within the 30-
 190 day period, he or she forfeits the right to impose a claim upon
 191 the security deposit and may not seek setoff against the deposit
 192 but may file an action for damages after return of the deposit.
 193

194 (b) Unless the tenant objects to the imposition of the
 195 landlord's claim or the amount thereof within 15 days after
 196 receipt of the landlord's notice of intention to impose a claim,
 197 the landlord may then deduct the amount of his or her claim and
 198 shall remit the balance of the deposit to the tenant within 30
 199 days after the date of the notice of intention to impose a claim
 200 for damages. The failure of the tenant to make a timely
 201 objection does not waive any rights of the tenant to seek
 202 damages in a separate action.

203 (c) If either party institutes an action in a court of
 204 competent jurisdiction to adjudicate the party's right to the

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 204 security deposit, the prevailing party is entitled to receive
 205 his or her court costs plus a reasonable fee for his or her
 206 attorney. The court shall advance the cause on the calendar.
 207

208 (d) Compliance with this section by an individual or
 209 business entity authorized to conduct business in this state,
 210 including Florida-licensed real estate brokers and sales
 211 associates, constitutes ~~shall constitute~~ compliance with all
 212 other relevant Florida Statutes pertaining to security deposits
 213 held pursuant to a rental agreement or other landlord-tenant
 214 relationship. Enforcement personnel shall look solely to this
 215 section to determine compliance. This section prevails over any
 216 conflicting provisions in chapter 475 and in other sections of
 217 the Florida Statutes, and shall operate to permit licensed real
 218 estate brokers to disburse security deposits and deposit money
 219 without having to comply with the notice and settlement
 220 procedures contained in s. 475.25(1) (d).

221 (7) Upon the sale or transfer of title of the rental
 222 property from one owner to another, or upon a change in the
 223 designated rental agent, any and all security deposits or
 224 advance rents being held for the benefit of the tenants shall be
 225 transferred to the new owner or agent, together with any earned
 226 interest and with an accurate accounting showing the amounts to
 227 be credited to each tenant account. Upon the transfer of such
 228 funds and records to the new owner or agent as stated herein,
 229 and upon transmittal of a written receipt therefor, the
 230 transferor ~~is shall be~~ free from the obligation imposed in
 231 subsection (1) to hold such moneys on behalf of the tenant.
 232 There is a rebuttable presumption that any new owner or agent
received the security deposits from the previous owner or agent;

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233 however, the new owner or agent is not liable to a tenant for
 234 deposits in excess of 1 month's rent. This subsection does not
 235 ~~However, nothing herein shall~~ excuse the landlord or agent for a
 236 violation of other the provisions of this section while in
 237 possession of such deposits.

238 Section 5. Section 83.50, Florida Statutes, is amended to
 239 read:

240 83.50 Disclosure.—

241 ~~(1)~~ The landlord, or a person authorized to enter into a
 242 rental agreement on the landlord's behalf, shall disclose in
 243 writing to the tenant, at or before the commencement of the
 244 tenancy, the name and address of the landlord or a person
 245 authorized to receive notices and demands in the landlord's
 246 behalf. The person so authorized to receive notices and demands
 247 retains authority until the tenant is notified otherwise. All
 248 notices of such names and addresses or changes thereto shall be
 249 delivered to the tenant's residence or, if specified in writing
 250 by the tenant, to any other address.

251 ~~(2) The landlord or the landlord's authorized~~
 252 ~~representative, upon completion of construction of a building~~
 253 ~~exceeding three stories in height and containing dwelling units,~~
 254 ~~shall disclose to the tenants initially moving into the building~~
 255 ~~the availability or lack of availability of fire protection.~~

256 Section 6. Subsection (1) and paragraph (a) of subsection
 257 (2) of section 83.51, Florida Statutes, are amended, and
 258 subsection (5) is added to that section, to read:

259 83.51 Landlord's obligation to maintain premises and pay
 260 assessments.—

261 (1) The landlord at all times during the tenancy shall:

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262 (a) Comply with the requirements of applicable building,
 263 housing, and health codes; or

264 (b) Where there are no applicable building, housing, or
 265 health codes, maintain the roofs, windows, ~~screens,~~ doors,
 266 floors, steps, porches, exterior walls, foundations, and all
 267 other structural components in good repair and capable of
 268 resisting normal forces and loads and the plumbing in reasonable
 269 working condition. ~~However,~~

270
 271 The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home
 272 or other structure owned by the tenant. The landlord's
 273 obligations under this subsection may be altered or modified in
 274 writing with respect to a single-family home or duplex.

275 (2) (a) Unless otherwise agreed in writing, in addition to
 276 the requirements of subsection (1), the landlord of a dwelling
 277 unit other than a single-family home or duplex shall, at all
 278 times during the tenancy, make reasonable provisions for:

279 1. The extermination of rats, mice, roaches, ants, wood-
 280 destroying organisms, and bedbugs. When vacation of the premises
 281 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
 282 liable for damages but shall abate the rent. The tenant must
 283 ~~shall be required to~~ temporarily vacate the premises for a
 284 period of time not to exceed 4 days, on 7 days' written notice,
 285 if necessary, for extermination pursuant to this subparagraph.

286 2. Locks and keys.

287 3. The clean and safe condition of common areas.

288 4. Garbage removal and outside receptacles therefor.

289 5. Functioning facilities for heat during winter, running
 290 water, and hot water.

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291 6. Screens.292 (5) The landlord shall pay assessments due to a
293 condominium, cooperative, or homeowners' association.294 Section 7. Subsections (2) through (5) of section 83.56,
295 Florida Statutes, are amended to read:

296 83.56 Termination of rental agreement.—

297 (2) If the tenant materially fails to comply with s. 83.52
298 or material provisions of the rental agreement, other than a
299 failure to pay rent, or reasonable rules or regulations, the
300 landlord may:301 (a) If such noncompliance is of a nature that the tenant
302 should not be given an opportunity to cure it ~~or if the~~
303 ~~noncompliance constitutes a subsequent or continuing~~
304 ~~noncompliance within 12 months of a written warning by the~~
305 ~~landlord of a similar violation~~, deliver a written notice to the
306 tenant specifying the noncompliance and the landlord's intent to
307 terminate the rental agreement by reason thereof. Examples of
308 noncompliance which are of a nature that the tenant should not
309 be given an opportunity to cure include, but are not limited to,
310 destruction, damage, or misuse of the landlord's or other
311 tenants' property by intentional act or a subsequent or
312 continued unreasonable disturbance. In such event, the landlord
313 may terminate the rental agreement, and the tenant shall have 7
314 days from the date that the notice is delivered to vacate the
315 premises. The notice shall be ~~adequate if it is~~ in substantially
316 the following form:317
318 You are advised that your lease is terminated effective
319 immediately. You shall have 7 days from the delivery of this

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320 letter to vacate the premises. This action is taken because
321 ... (cite the noncompliance)....322
323 (b) If such noncompliance is of a nature that the tenant
324 should be given an opportunity to cure it, deliver a written
325 notice to the tenant specifying the noncompliance, including a
326 notice that, if the noncompliance is not corrected within 7 days
327 from the date the written notice is delivered, the landlord
328 shall terminate the rental agreement by reason thereof. Examples
329 of such noncompliance include, but are not limited to,
330 activities in contravention of the lease or this part ~~act~~ such
331 as having or permitting unauthorized pets, guests, or vehicles;
332 parking in an unauthorized manner or permitting such parking; or
333 failing to keep the premises clean and sanitary. An eviction
334 action filed pursuant to this paragraph does not require a
335 subsequent notice pursuant to paragraph (a). The notice shall be
336 ~~adequate if it is~~ in substantially the following form:337
338 You are hereby notified that ... (cite the
339 noncompliance).... Demand is hereby made that you remedy the
340 noncompliance within 7 days of receipt of this notice or your
341 lease shall be deemed terminated and you shall vacate the
342 premises upon such termination. If this same conduct or conduct
343 of a similar nature is repeated within 12 months, your tenancy
344 is subject to termination without further warning and without
345 your being given an opportunity to cure the noncompliance.346
347 (3) If the tenant fails to pay rent when due and the
348 default continues for 3 days, excluding Saturday, Sunday, and

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 349 legal holidays, after delivery of written demand by the landlord
 350 for payment of the rent or possession of the premises, the
 351 landlord may terminate the rental agreement. Legal holidays for
 352 the purpose of this section shall be court-observed holidays
 353 only. After service of the 3-day notice, the landlord may
 354 require payment of the rent to be by cash, money order, or
 355 certified funds. The total amount claimed may include all moneys
 356 owed to the landlord through the date of the notice, including
 357 late fees. The 3-day notice shall contain a statement in
 358 substantially the following form:

359
 360 You are hereby notified that you are indebted to me in the
 361 sum of dollars for the rent and use of the premises
 362 ..(address of leased premises, including county)..., Florida,
 363 now occupied by you and that I demand payment of the rent or
 364 possession of the premises within 3 days (excluding Saturday,
 365 Sunday, and legal holidays) from the date of delivery of this
 366 notice, to wit: on or before the day of, ..(year)....
 367 ... (landlord's name, address and phone number)...

368
 369 (4) The delivery of the written notices required by
 370 subsections (1), (2), and (3) shall be by mailing or delivery of
 371 a true copy thereof or, if the tenant is absent from the
 372 premises, by leaving a copy thereof at the residence. The notice
 373 requirements of subsections (1), (2), and (3) may not be waived
 374 in the lease.

375 (5) (a) If the landlord accepts rent with actual knowledge
 376 of a noncompliance by the tenant or accepts performance by the
 377 tenant of any other provision of the rental agreement that is at

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 378 variance with its provisions, or if the tenant pays rent with
 379 actual knowledge of a noncompliance by the landlord or accepts
 380 performance by the landlord of any other provision of the rental
 381 agreement that is at variance with its provisions, the landlord
 382 or tenant waives his or her right to terminate the rental
 383 agreement or to bring a civil action for that noncompliance, but
 384 not for any subsequent or continuing noncompliance. However, a
 385 landlord does not waive the right to terminate the rental
 386 agreement or to bring a civil action for that noncompliance
 387 simply by accepting partial rent for the period if the landlord
 388 notifies the tenant that the landlord is reserving the right to
 389 enforce the rental agreement.

390 (b) Any tenant who wishes to defend against an action by
 391 the landlord for possession of the unit for noncompliance of the
 392 rental agreement or of relevant statutes must ~~shall~~ comply with
 393 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
 394 mediation or trial unless the provisions of s. 83.60(2) have
 395 been met, but shall enter a default judgment for removal of the
 396 tenant with a writ of possession to issue immediately if the
 397 tenant fails to comply with s. 83.60(2). This subsection does
 398 not apply to that portion of rent subsidies received from a
 399 local, state, or national government or an agency of local,
 400 state, or national government; however, waiver will occur if an
 401 action has not been instituted within 90 ~~45~~ days after ~~of~~ the
 402 noncompliance.

403 Section 8. Section 83.575, Florida Statutes, is amended to
 404 read:

405 83.575 Termination of tenancy with specific duration.—

406 (1) A rental agreement with a specific duration may contain

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407 a provision requiring the tenant to notify the landlord before
 408 vacating the premises at the end of the rental agreement if the
 409 provision also requires that the landlord notify the tenant if
 410 the rental agreement will not be renewed on the same terms;
 411 however, a rental agreement may not require more than 60 days'
 412 notice from either the tenant or the landlord before vacating
 413 the premises.

414 (2) A rental agreement with a specific duration may provide
 415 that if a tenant fails to give the required notice before
 416 vacating the premises at the end of the rental agreement, the
 417 tenant may be liable for liquidated damages as specified in the
 418 rental agreement if the landlord provides written notice to the
 419 tenant specifying the tenant's obligations under the
 420 notification provision contained in the lease and the date the
 421 rental agreement is terminated. The landlord must provide such
 422 written notice to the tenant within 15 days before the start of
 423 the notification period contained in the lease. The written
 424 notice shall list all fees, penalties, and other charges
 425 applicable to the tenant under this subsection. The rental
 426 agreement must provide a reciprocal agreement that if the
 427 landlord fails to give the tenant the required timely notice of
 428 nonrenewal, the tenant may elect to continue the tenancy for up
 429 to 60 days after the tenant's receipt of notice of nonrenewal.

430 (3) If the tenant remains on the premises with the
 431 permission of the landlord after the rental agreement has
 432 terminated and fails to give notice required under s. 83.57(3),
 433 the tenant is liable to the landlord for an additional 1 month's
 434 rent.

435 Section 9. Section 83.58, Florida Statutes, is amended to

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436 read:

437 83.58 Remedies; tenant holding over.—If the tenant holds
 438 over and continues in possession of the dwelling unit or any
 439 part thereof after the expiration of the rental agreement
 440 without the permission of the landlord, the landlord may recover
 441 possession of the dwelling unit in the manner provided for in s.
 442 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
 443 amount of rent due on the dwelling unit, or any part thereof,
 444 for the period during which the tenant refuses to surrender
 445 possession.

446 Section 10. Subsection (2) of section 83.59, Florida
 447 Statutes, is amended to read:

448 83.59 Right of action for possession.—

449 (2) A landlord, the landlord's attorney, or the landlord's
 450 agent, applying for the removal of a tenant, shall file in the
 451 county court of the county where the premises are situated a
 452 complaint describing the dwelling unit and stating the facts
 453 that authorize its recovery. A landlord's agent is not permitted
 454 to take any action other than the initial filing of the
 455 complaint, unless the landlord's agent is an attorney. The
 456 landlord is entitled to the summary procedure provided in s.
 457 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the
 458 calendar.

459 Section 11. Section 83.60, Florida Statutes, is amended to
 460 read:

461 83.60 Defenses to action for rent or possession;
 462 procedure.—

463 (1) In an action by the landlord for possession of a
 464 dwelling unit based upon nonpayment of rent or in an action by

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465 the landlord under s. 83.55 seeking to recover unpaid rent, the
 466 tenant may defend upon the ground of a material noncompliance
 467 with s. 83.51(1) ~~{F.S. 1973}~~, or may raise any other defense,
 468 whether legal or equitable, that he or she may have, including
 469 the defense of retaliatory conduct in accordance with s. 83.64.
 470 The defense of a material noncompliance with s. 83.51(1) ~~{F.S.~~
 471 ~~1973}~~ may be raised by the tenant if 7 days have elapsed after
 472 the delivery of written notice by the tenant to the landlord,
 473 specifying the noncompliance and indicating the intention of the
 474 tenant not to pay rent by reason thereof. Such notice by the
 475 tenant may be given to the landlord, the landlord's
 476 representative as designated pursuant to s. 83.50(4), a resident
 477 manager, or the person or entity who collects the rent on behalf
 478 of the landlord. A material noncompliance with s. 83.51(1) ~~{F.S.~~
 479 ~~1973}~~ by the landlord is a complete defense to an action for
 480 possession based upon nonpayment of rent, and, upon hearing, the
 481 court or the jury, as the case may be, shall determine the
 482 amount, if any, by which the rent is to be reduced to reflect
 483 the diminution in value of the dwelling unit during the period
 484 of noncompliance with s. 83.51(1) ~~{F.S. 1973}~~. After
 485 consideration of all other relevant issues, the court shall
 486 enter appropriate judgment.

487 (2) In an action by the landlord for possession of a
 488 dwelling unit, if the tenant interposes any defense other than
 489 payment, the tenant shall pay into the registry of the court the
 490 accrued rent as alleged in the complaint or as determined by the
 491 court and the rent that ~~which~~ accrues during the pendency of the
 492 proceeding, when due. The clerk shall notify the tenant of such
 493 requirement in the summons. Failure of the tenant to pay the

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494 rent into the registry of the court or to file a motion to
 495 determine the amount of rent to be paid into the registry within
 496 5 days, excluding Saturdays, Sundays, and legal holidays, after
 497 the date of service of process constitutes an absolute waiver of
 498 the tenant's defenses other than payment, and the landlord is
 499 entitled to an immediate default judgment for removal of the
 500 tenant with a writ of possession to issue without further notice
 501 or hearing thereon. If ~~In the event~~ a motion to determine rent
 502 is filed, documentation in support of the allegation that the
 503 rent as alleged in the complaint is in error is required. Public
 504 housing tenants or tenants receiving rent subsidies are ~~shall be~~
 505 required to deposit only that portion of the full rent for which
 506 they are ~~the tenant is~~ responsible pursuant to the federal,
 507 state, or local program in which they are participating.

508 Section 12. Subsection (1) of section 83.62, Florida
 509 Statutes, is amended to read:

510 83.62 Restoration of possession to landlord.—

511 (1) In an action for possession, after entry of judgment in
 512 favor of the landlord, the clerk shall issue a writ to the
 513 sheriff describing the premises and commanding the sheriff to
 514 put the landlord in possession after 24 hours' notice
 515 conspicuously posted on the premises. Weekends and legal
 516 holidays do not stay the 24-hour notice period.

517 Section 13. Section 83.63, Florida Statutes, is amended to
 518 read:

519 83.63 Casualty damage.—If the premises are damaged or
 520 destroyed other than by the wrongful or negligent acts of the
 521 tenant so that the enjoyment of the premises is substantially
 522 impaired, the tenant may terminate the rental agreement and

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 523 immediately vacate the premises. The tenant may vacate the part
 524 of the premises rendered unusable by the casualty, in which case
 525 the tenant's liability for rent shall be reduced by the fair
 526 rental value of that part of the premises damaged or destroyed.
 527 If the rental agreement is terminated, the landlord shall comply
 528 with s. 83.49(3) ~~{F.S. 1973}~~.

529 Section 14. Subsection (1) of section 83.64, Florida
 530 Statutes, is amended to read:

531 83.64 Retaliatory conduct.—

532 (1) It is unlawful for a landlord to discriminatorily
 533 increase a tenant's rent or decrease services to a tenant, or to
 534 bring or threaten to bring an action for possession or other
 535 civil action, primarily because the landlord is retaliating
 536 against the tenant. In order for the tenant to raise the defense
 537 of retaliatory conduct, the tenant must have acted in good
 538 faith. Examples of conduct for which the landlord may not
 539 retaliate include, but are not limited to, situations where:

540 (a) The tenant has complained to a governmental agency
 541 charged with responsibility for enforcement of a building,
 542 housing, or health code of a suspected violation applicable to
 543 the premises;

544 (b) The tenant has organized, encouraged, or participated
 545 in a tenants' organization;

546 (c) The tenant has complained to the landlord pursuant to
 547 s. 83.56(1); ~~or~~

548 (d) The tenant is a servicemember who has terminated a
 549 rental agreement pursuant to s. 83.682;

550 (e) The tenant has paid the rent to a condominium,
 551 cooperative, or homeowners' association after demand from the

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 552 association in order to pay the landlord's obligation to the
 553 association; or
 554 (f) The tenant has exercised his or her rights under local,
 555 state, or federal fair housing laws.

556 Section 15. Section 83.683, Florida Statutes, is created to
 557 read:

558 83.683 Foreclosure of leased property.—

559 (1) A landlord is not required to notify a tenant of a
 560 mortgage default.

561 (2) A pending foreclosure action involving the leased
 562 premises is not grounds for a tenant to terminate a lease.

563 Section 16. This act shall take effect July 1, 2012.

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 442

INTRODUCER: Senator Braynon

SUBJECT: Fair Housing

DATE: February 8, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Irwin</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows a person who alleges housing discrimination to file a civil action in a Florida court of law whether or not a complaint has been filed with the Florida Commission on Human Relations or a local housing discrimination agency and regardless of a conciliation agreement.

This bill substantially amends section 760.35, Florida Statutes.

II. Present Situation:

Florida Commission on Human Relations

Chapter 760, F.S., ensures that all individuals in Florida are protected against discrimination in areas of employment, housing and other opportunities based on race, color, religion, sex, national origin, age, handicap, or marital or familial status. Section 760.03, F.S., creates the Florida Commission on Human Relations (Commission) and authorizes the Commission to carry out the purposes of ch. 760, F.S. Section 760.04, F.S., assigns the Commission to the Department of Management Services; however, the Commission is not subject to any control, or supervision by, or direction from the department.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.¹ The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.²

¹ Section 760.03(1), F.S.

² Section 760.03(2), F.S.

At least one member of the Commission, as required by law, must be 60 years of age or older.³ The Commission is empowered, pursuant to s. 760.06(5), F.S., to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging any discriminatory practice.

Florida Fair Housing Act

Part II of Chapter 760, F.S., constitutes the Florida Fair Housing Act. It is the state's policy, as provided in s. 760.21, F.S., to provide for fair housing throughout the state. Part II defines what constitutes unlawful housing discrimination. For example, it is unlawful to refuse or sell or rent or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.⁴ In addition, protection is afforded an individual who is pregnant or in the process of securing legal custody of a child 18 years of age or younger, or an individual who is handicapped or is associated with a handicapped person.⁵

Enforcement of the Florida Fair Housing Act

Section 760.34(1), F.S., provides that any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with the Commission. The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.⁶ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁷ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁸ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may commence a civil action or petition for an administrative determination.⁹

Section 760.34(8), F.S., provides that any local agency certified as substantially equivalent¹⁰ may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with the local fair housing law. The local agency need not petition for an administrative hearing or exhaust its administrative remedies prior to bringing a civil action.¹¹

³ *Id.*

⁴ Section 760.23(1), F.S.

⁵ Sections 760.23(6)-(9), F.S.

⁶ Section 760.34(2), F.S.

⁷ Section 760.34(1), F.S.

⁸ *Id.*

⁹ Section 760.34(4), F.S.

¹⁰ *See* Section 760.22(9), F.S. (Substantial equivalence certification takes place when a state or local agency applies for certification and the U.S. Department of Housing and Urban Development (HUD) determines that the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act).

¹¹ Section 760.34(8), F.S.

Civil Actions and Relief

Section 760.35, F.S., provides for civil actions and administrative relief. A civil action must be commenced no later than two years after the alleged discriminatory act occurred.¹² The court can continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.¹³ If the court finds that a discriminatory housing practice has occurred, it is to issue an order prohibiting the practice and providing affirmative relief.¹⁴ If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding or the aggrieved person may request administrative relief within 30 days after receiving notice that the Commission has concluded its investigation.¹⁵

Federal Discrimination Housing Law

In addition to adhering to the state discrimination laws, the Commission abides by federal discrimination laws. Through annual work-share agreements with the U.S. Department of Housing and Urban Development (HUD), the Commission, certified as a substantially equivalent agency,¹⁶ accepts and investigates housing discrimination cases from HUD. Federal housing discrimination laws are contained in Title VIII (Fair Housing Act) of the federal Civil Rights Act of 1968.¹⁷ The Commission is reimbursed by HUD for closing housing cases; such funds are deposited into the Commission's trust fund. Trust fund monies received from HUD in FY 2010-11 totaled \$926,679 or 79 percent.¹⁸

2010-2011 Housing Related Complaints

According to the Commissions' 2010-2011 Annual Report, housing complaints represented 22 percent of all complaints received by the Commission in 2011.¹⁹ The 269 housing cases closed in FY 2010-11 were distributed as follows:²⁰

¹² Section 760.35(1), F.S.

¹³ *Id.*

¹⁴ Section 760.35(2), F.S.

¹⁵ Section 760.35(3), F.S.

¹⁶ See U.S. Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op/partners/FHAP/agencies (last visited January 26, 2012) (Providing a listing of agencies certified as a "fair housing assistance program" (FHAP) with HUD. A variety of FHAP funds are available to agencies with substantial equivalence interim certification and certification).

¹⁷ 42 U.S.C. ch. 45.

¹⁸ E-mail from Hunter Barnett, Policy Analyst, Florida Commission on Human Relations (January 19, 2012) (on file with the Senate Committee on Judiciary). Total FY 2010-11 trust fund dollars were \$1,168,651 and represented 27 percent of the Commission's budget. The Commission's trust fund dollars are composed of federal fund receipts (from HUD and Equal Employment Opportunity Commission for closed cases), payment received for public records copy requests and 55+ housing registrations and renewals (biennial fee of \$20 per facility/community).

¹⁹ Florida Commission on Human Relations, *Annual Report 2010-2011*, 5 (2011) (indicating employment complaints represented 73 percent, housing complaints 22 percent, whistle blower complaints 3 percent and public accommodations 2 percent).

²⁰ E-mail from Hunter Barnett, Policy Analyst, Florida Commission on Human Relations (January 19, 2012) (on file with the Senate Committee on Judiciary).

No Cause	171 (64%)
Administrative Closure	46 (17%)
Cause	20 (7%)
Settlement	16 (6%)
Withdrawal with Benefits	16 (6%)

State Law Regarding Avenues of Relief for Complaints Under the Florida Fair Housing Act

Florida’s 4th District Court of Appeal held in the 2004 case, *Belletete v. Halford*, that individuals claiming discrimination under the Florida Fair Housing Act must exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.^{21, 22} The Florida Supreme Court has not addressed this issue yet, leaving the 4th DCA decision the only one on point in the state court system. However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that “as co-enforcer with the Florida Commission on Human Relations of the FFHA [Florida Fair Housing Act], it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy.”²³ The court agreed that the 4th DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before petitioning the courts for relief in a cause of action grounded in the Florida Fair Housing Act.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 760.35, F.S., to add a subsection (4) providing that an aggrieved person may commence a civil action whether or not a complaint has been filed under s. 760.34, F.S., and without regard to the status of that complaint. However, if the Florida Commission on Human Relations or a local housing discrimination agency has obtained a conciliation agreement with the consent of an aggrieved person, an action may not be filed except for the purpose of enforcing the terms of that agreement.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004).

²² *See also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973) (the Doctrine of Exhaustion of Administrative Remedies stands generally for the proposition that judicial intervention in executive branch decision making is precluded where administrative procedures can afford the relief a litigant seeks).

²³ *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, at *1 (S.D. Fla. 2010).

²⁴ *Id.* at *2 (holding that the Florida Fair Housing Act should be interpreted similarly to the Federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Entities engaged in the housing industry may experience indeterminate effects as a result of the bill.

C. Government Sector Impact:

According to the Commission, they would incur no fiscal or workload impact related to the bill.²⁵ However, the Commission cautioned that the bill may create additional workload on Florida's court system if persons bypass the investigation and conciliation process.

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.

²⁵ Florida Commission on Human Relations, *SB 442 Analysis* (on file with the Senate Committee on Community Affairs)

By Senator Braynon

33-00434-12

2012442__

1 A bill to be entitled
2 An act relating to fair housing; amending s. 760.35,
3 F.S.; providing that an aggrieved person may file a
4 civil action without first filing an administrative
5 complaint for a discriminatory housing practice;
6 providing that, if the Florida Commission on Human
7 Relations or local agency has obtained a conciliation
8 agreement with the consent of the aggrieved person,
9 the filing of a civil action is prohibited, except to
10 enforce the terms of the agreement; providing an
11 effective date.
12

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

14
15 Section 1. Subsection (4) is added to section 760.35,
16 Florida Statutes, to read:

17 760.35 Civil actions and relief; administrative
18 procedures.—

19 (4) An aggrieved person may commence a civil action under
20 this section whether or not a complaint has been filed under s.
21 760.34 and without regard to the status of that complaint.
22 However, if the commission or local agency has obtained a
23 conciliation agreement with the consent of an aggrieved person,
24 an action may not be filed under this section by the aggrieved
25 person with respect to the alleged discriminatory housing
26 practice that forms the basis for the complaint except for the
27 purpose of enforcing the terms of that agreement.

28 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)

2 1 9 / 2012

Meeting Date

Topic _____

Bill Number 442
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE 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

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Budget
Budget - Subcommittee on Health and Human Services
Appropriations
Community Affairs
Judiciary
Rules
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:

Legislative Budget Commission

SENATOR GARRETT RICHTER
37th District

February 1, 2012

The Honorable Anitere Flores, Chair
The Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I respectfully ask to be excused from the Judiciary Committee meeting scheduled for February 9, 2012 for personal reasons.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tom Cibula, Staff Director

Handwritten initials in black ink, possibly "AP".

REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 1039 S.E. 9th Place, Room 310, Cape Coral, Florida 33990 (239) 338-2777
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5124

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:

Health Regulation, *Vice Chair*
Banking and Insurance
Budget
Budget - Subcommittee on Health and Human Services
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Environmental Preservation and Conservation
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR ELEANOR SOBEL

31st District

February 9, 2012

Senator Anitere Flores
316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Senator Flores,

I am writing to inform you that my full time student intern, Natasha Mirza, will be presenting SB534 on my behalf. I have a conflicting bill being heard in another committee and I will be unable to present it myself. Natasha is a third year undergraduate student at the University of Florida. She is participating in President Haridopolos's internship program.

Thank you.

With Best Regards,

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

Eleanor Sobel
State Senator
District 31

Handwritten initials, possibly "MF", in a stylized cursive script.

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Boulevard, Hollywood, Florida 33020 (954) 924-3693
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5097

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

February 9, 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 802, relating to the Premises Liability, 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, Nic Abrahams, 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".

Charles S. Dean
State Senator, Dist.3

Handwritten initials in black ink, possibly "AF".

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:
Health Regulation, *Chair*
Agriculture
Budget - Subcommittee on Health and Human Services
Appropriations
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR RENE GARCIA
40th District

February 9, 2012

The Honorable Anitere Flores
Chair, Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Flores:

Due to a scheduling conflict, I will not be able to present my bill *SB 720 Miami-Dade County Home Rule Charter* at your committee meeting this afternoon. I ask that you allow a member of my staff David Marin to present the bill on my behalf. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

Handwritten signature of René García.

State Senator René García
District 40

Handwritten initials, possibly "RG".

RG:dm

CC: Tom Cibula, Staff Director

REPLY TO:

- 3814 West 12th Avenue, Hialeah, Florida 33012 (305) 824-5058
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5106

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: 2/9/2012 1:20:45 PM

Ends: 2/9/2012 3:15:48 PM Length: 01:55:04

1:20:47 PM Meeting Called to Order by Chair
1:20:51 PM Roll Called by CAA
1:20:57 PM SB 1830 will be TP'd stated Chair Flores
1:21:44 PM SB 748 by Senator Diaz de la Portilla
1:22:05 PM A600742 by Flores
1:22:20 PM SA 276912 to A600742 by Flores - Favorable
1:22:35 PM ASA 586346 to SA 276912 by Flores - Withdrawn
1:23:25 PM SA 276912 by Flores - Favorable
1:29:44 PM Thomas Duggar representing Family Law Section of FL. Bar
1:31:22 PM R C Lindsey
1:33:40 PM Deborah Israel representing self
1:37:36 PM Alan Frisher representing FL. Alimony Reform
1:40:37 PM Brian Keith Reynolds representing self
1:41:45 PM SB 748 by Senator Diaz de la Portilla - TP'd
1:43:39 PM SB 108 by Senator Negron
1:44:20 PM A799762 by Simmons - Favorable
1:48:32 PM Brian Pitts representing Justice to Jesus
1:50:54 PM Roll Call on SJR 108
1:51:06 PM SJR 108 by Senator Negron - Favorable with 1 Amendment
1:51:45 PM SB 748 by Senator Diaz de la Portilla
1:51:56 PM Brian Pitts representing Justice 2 Jesus
1:55:01 PM Roll Call on SB 748
1:56:02 PM SB 748 by Senator Diaz de la Portilla - Favorable as a CS
1:56:37 PM SB 462 by Senator Bogdanoff
1:56:39 PM A603148 by Braynon - Favorable
1:56:41 PM A108620 by Braynon - Withdrawn
1:56:56 PM A673016 by Braynon - Favorable
1:58:40 PM Roll Call on SB 462
1:59:40 PM SB 462 Senator Bogdanoff - Favorable as a CS
1:59:57 PM SB 1202 by Senator Bogdanoff
2:00:45 PM A214198 by Braynon
2:01:20 PM A131190 to A214198 by Braynon - Favorable
2:01:45 PM A416158 to A214198 by Braynon - Favorable
2:03:45 PM A214198 by Braynon as Amended - Favorable
2:05:17 PM Roll Call on SB 1202
2:05:43 PM SB 1202 by Senator Bogdanoff - Favorable as a CS
2:06:14 PM SB 1404 by Senator Altman
2:06:20 PM A514586 by Flores - Favorable
2:06:45 PM A513144 by Flores - Favorable
2:07:20 PM A539680 by Flores - Favorable
2:08:31 PM Brian Pitts representing Justice 2 Jesus
2:11:19 PM Roll Call on SB 1404
2:12:19 PM SB 1404 by Senator Altman - Favorable as a CS
2:12:46 PM SB 462 by Senator Bogdanoff (Reconsidered)
2:12:47 PM Reconsider A108620 - Favorable
2:12:52 PM A108820 by Braynon - Favorable
2:13:44 PM Roll Call on SB 462
2:13:54 PM SB 462 by Senator Bogdanoff - Favorable as a CS
2:14:07 PM SB 370 by Senator Wise
2:14:10 PM A837024 by Braynon - Favorable
2:15:10 PM A319558 by Braynon - Favorable
2:17:11 PM Roll Call on SB 370

2:17:18 PM SB 370 by Senator Wise - Favorable as a CS
2:17:49 PM SB 534 by Senator Sobel
2:18:38 PM Roll Call on SB 534
2:19:09 PM SB 534 by Senator Sobel - Favorable
2:19:21 PM SJR 720 by Senator Garcia
2:21:09 PM Brian Pitts representing Justice 2 Jesus
2:23:45 PM Roll Call on SJR 720
2:24:47 PM SJR 720 by Senator Garcia - Favorable
2:25:17 PM SJR 838 by Senator Diaz de la Portilla
2:25:45 PM Late Filed A157764 by Joyner - Favorable
2:26:56 PM Roll Call on SJR 838
2:27:54 PM SJR 838 by Senator Diaz de la Portilla - Favorable as a CS
2:28:20 PM SB 1662 by Senator Latvala
2:28:35 PM A948912 by Joyner - Withdrawn
2:28:47 PM SA189850 by Joyner - Favorable
2:29:16 PM Stephanie Walker representing Armwood High School
2:30:03 PM Tori Wilson representing Armwood High School
2:30:30 PM Tiara Brooks representing Armwood High School
2:31:06 PM Jessica Ireland representing Armwood High School
2:31:58 PM Michael Himes representing Armwood High School
2:33:40 PM Kent Spuhler representing FL. Legal Services Inc.
2:35:14 PM Roll Call on SB 1662
2:35:27 PM SB 1662 by Senator Latvala - Favorable as a CS
2:36:49 PM SB 802 by Senator Dean
2:37:01 PM A181882 by Simmons - Favorable
2:37:41 PM A370198 by Braynon - Favorable
2:38:11 PM Late Filed A632662 by Braynon - Favorable
2:41:57 PM Brandy Elliott representing Fish and Wildlife Conservation Commission
2:44:51 PM Paul with FL. Justice Commission
2:47:15 PM Brian Pitts representing Justice 2 Jesus
2:51:05 PM Roll Call on SB 802
2:51:22 PM SB 802 by Senator Dean - Favorable as a CS
2:51:40 PM SB 2044 by Children, Families and Elder affairs
2:52:20 PM A161064 by Simmons
2:54:20 PM A394184 by Simmons - Favorable
2:54:35 PM Roll Call on SB 2044
2:55:01 PM SB 2044 by Children, Families and Elder Affairs - Favorable as a CS
2:55:26 PM SB 442 by Senator Braynon
2:56:07 PM Roll Call on SB 442
2:56:15 PM SB 442 by Senator Braynon - Favorable
2:56:48 PM SB 1196 by Senator Bennett
2:57:25 PM A417574 by Thrasher - Favorable
2:59:04 PM Keith Hetrick representing Association of FL. Community Developers & FL. Home Builder Assoc.
3:07:43 PM Richard Gentry representing AIF, N.E. FL. Builders Assoc.
3:09:07 PM Sanjay Kurian representing Community Association Leadership Lobby
3:13:57 PM Roll Call on SB 1196
3:14:58 PM SB 1196 by Senator Bennett - Favorable as a CS
3:15:09 PM Senator Thrasher motion to Adjourned