<table>
<thead>
<tr>
<th>Tab 1</th>
<th>SB 160 by Perry (CO-INTRODUCERS) Hooper; Peer-to-peer Support for First Responders</th>
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<tbody>
<tr>
<td></td>
<td>191422 A S WD JU, Perry btw L.52 - 53: 11/06 09:30 AM</td>
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<tr>
<th>Tab 2</th>
<th>SB 162 by Perry; Public Records</th>
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<tr>
<th>Tab 3</th>
<th>SB 248 by Hooper; (Identical to H 00063) Public Records/County Attorneys and Assistant County Attorneys</th>
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<tr>
<th>Tab 4</th>
<th>SB 344 by Bradley; (Identical to H 00211) Courts</th>
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<tbody>
<tr>
<td></td>
<td>386350 A S RCS JU, Bradley Delete L.42 - 69: 11/05 05:36 PM</td>
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<tr>
<th>Tab 5</th>
<th>SB 358 by Berman; (Identical to H 00505) Decedents' Property</th>
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<td></td>
<td>665556 A S RCS JU, Berman Delete L.86 - 133: 11/05 05:36 PM</td>
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<tr>
<th>Tab 6</th>
<th>SB 374 by Rouson; (Identical to H 00175) Housing Discrimination</th>
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<th>Tab 7</th>
<th>SB 468 by Brandes; Mandatory Sentences</th>
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<th>Tab 8</th>
<th>SJR 176 by Rodriguez; Single-subject Limitation for Constitution Revision Commission Proposals</th>
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<tr>
<th>Tab 9</th>
<th>SJR 396 by Rodriguez; Single-subject Limitation for Taxation and Budget Reform Commission</th>
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Page 1 of 1
### MEETING DATE:
Tuesday, November 5, 2019

**TIME:** 2:00—4:00 p.m.

**PLACE:** Toni Jennings Committee Room, 110 Senate Building

**MEMBERS:** Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

<table>
<thead>
<tr>
<th>TAB</th>
<th>BILL NO. and INTRODUCER</th>
<th>BILL DESCRIPTION and SENATE COMMITTEE ACTIONS</th>
<th>COMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SB 160 Perry</td>
<td>Peer-to-peer Support for First Responders; Prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances, etc.</td>
<td>Temporarily Postponed</td>
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<td>JU 11/05/2019 Temporarily Postponed</td>
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<td>2</td>
<td>SB 162 Perry</td>
<td>Public Records: Requiring a court to assess the reasonable costs of enforcement against an agency upon the court’s determination in an action for a declaratory judgment that certain records are not subject to a public records exemption, etc.</td>
<td>Favorable Yeas 6 Nays 0</td>
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<tr>
<td>3</td>
<td>SB 248 Hooper (Identical H 63)</td>
<td>Public Records/County Attorneys and Assistant County Attorneys: Providing an exemption from public records requirements for the personal identifying and location information of current and former county attorneys and assistant county attorneys and the names and personal identifying and location information of the spouses and children of such attorneys; providing a statement of public necessity, etc.</td>
<td>Favorable Yeas 6 Nays 0</td>
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<td>JU 11/05/2019 Favorable</td>
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<td>4</td>
<td>SB 344</td>
<td>Courts: Specifying that certain exemptions from court-related fees and charges apply to certain entities; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; providing that a certain examination report related to annual guardianship plans may be prepared by a physician assistant or an advanced practice registered nurse under certain circumstances, etc.</td>
<td>Fav/CS Yeas 6 Nays 0</td>
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<tr>
<td></td>
<td>Bradley</td>
<td>(Identical H 211)</td>
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<td>5</td>
<td>SB 358</td>
<td>Decedents’ Property; Specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; specifying that a personal representative has the exclusive right to maintain an action to recover possession of property or determine the title to property; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed, etc.</td>
<td>Fav/CS Yeas 6 Nays 0</td>
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<tr>
<td></td>
<td>Berman</td>
<td>(Similar H 231, Identical H 505)</td>
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<td>6</td>
<td>SB 374</td>
<td>Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice, etc.</td>
<td>Favorable Yeas 6 Nays 0</td>
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<tr>
<td></td>
<td>Rouson</td>
<td>(Identical H 175)</td>
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<td>7</td>
<td>SB 468</td>
<td>Mandatory Sentences; Authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record, etc.</td>
<td>Favorable Yeas 5 Nays 1</td>
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<tr>
<td></td>
<td>Brandes</td>
<td>(Compare S 346)</td>
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<td>9</td>
<td>SJR 396 Rodriguez</td>
<td>Single-subject Limitation for Taxation and Budget Reform Commission; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject, etc.</td>
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Other Related Meeting Documents
I. Summary:

SB 160 generally prohibits the disclosure of communications made by a first responder for the purposes of receiving “peer-to-peer support” from a person who is not a healthcare practitioner.

Under the bill, a person is qualified to provide peer-to-peer support if the person “has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment.”

The bill protects the confidentiality of the communications by prohibiting the person providing support from divulging the communications or from testifying in civil, criminal, administrative, and disciplinary proceedings regarding the communications.

The bill, however, allows peer support communications to be disclosed if: the first responder provides written consent, the first responder files a complaint against the person providing peer support, or if the person providing peer support has reason to believe that the first responder is a threat to themselves or others.

The bill is effective July 1, 2020.

II. Present Situation:

First Responders

Under Florida law, a first responder is either a (1) law enforcement officer, (2) firefighter, or (3) emergency medical technician or paramedic, employed, or volunteering, with a state or local
government. Florida has an estimated 50,000 law enforcement officers,\(^1\) 22,000 firefighters,\(^2\) and over 60,000 emergency medical technicians and paramedics.\(^3\)

A study of 1,500 Florida first responders revealed that 60 percent displayed low levels of secondary traumatic stress, 39 percent displayed moderate levels, and 1 percent displayed high levels.\(^4\) A 2017 study of first responders nationwide found that 84 percent experienced a traumatic event on the job, while 34 percent received a formal diagnosis for a mental health disorder such as depression or post-traumatic stress disorder.\(^5\) It is estimated that 30 percent of first responders develop behavioral health conditions such as post-traumatic stress disorder and depression, in comparison to 20 percent for the general population.\(^6\)

**Peer Support Programs**

Some law enforcement agencies offer peer support programs, available either during crisis events or through full-time staff. In 2018, a study published by the *Journal of Police and Criminal Psychology* analyzed 110 different law enforcement agencies’ suicide prevention strategies for their employees.\(^7\) Thirty-one of these agencies had formal peer support programs. These agencies used peers as “para-professionals within the agency to address concerns officers had in using formal mental health/EAP services.”\(^8\) Some of these agencies likewise worked under a policy, or law within their jurisdiction, that assured confidentiality with these services.

Usually, officers apply and train to become a part of the program, and are overseen either by a mental health professional or agency leadership. While the officers can be officially recognized as “peer supporters,” they typically perform their roles informally without routine duties or office hours to provide support.

Similar to peer support, some agencies offer embedded services such as agency-affiliated chaplains and social workers to provide support to employees. Twelve of the 110 agencies studied used a method similar to this.

Large law enforcement agencies may have offices responsible for mental and emotional support for employees. The Psychological Services Section of the Miami-Dade Police Department, for

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8. *Id.*
example, offers consultation and referral services to employees. Officers and staff are on call 24 hours a day for officer-involved shootings, suicide interventions, and other crises. The office likewise supervises Police Chaplain Volunteers who provide support services to employees. Employees may also refer themselves to the county Employee Support Services, who provide a variety personal and mental health services and referrals with strict confidentiality.

The Baltimore Police Department and New York Police Departments have similar divisions incorporating mental health and suicide prevention programs. New York currently includes a peer-support program with confidentiality protections. While the Baltimore program does not, the Baltimore Police Commissioner has introduced a draft policy proposal to incorporate one.

Privileged Communications

When communications are protected from disclosure, typically, these protections are created by an evidentiary privilege codified in chapter 90, F.S., the Florida Evidence Code. Evidentiary privileges allow individuals to refuse to disclose certain protected information and conversations. These privileges are meant to promote honest communications between individuals involved. The Legislature recognizes the existence of an evidentiary privilege when it “judges that the protection of an interest or relationship is sufficiently important to society to justify the sacrifice of facts that might be needed for the administration of justice.”

On the other hand, “[t]he public ‘has a right to every man’s evidence.’” As such, evidentiary privileges are not favored, and the privilege not to disclose relevant evidence is an extraordinary exception to the duty to testify.

Florida has a few examples of evidentiary privileges that have some similarities peer support privileges.

Domestic Violence Advocate-Victim Privilege

Under the domestic violence advocate-victim privilege, a victim of domestic violence has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the

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16 Id.
course of advising, counseling, or assisting the victim.” A victim advocate must be an employee of a domestic violence program or volunteer who has at least 30 hours of training in assisting victims of domestic violence.

**Sexual assault counselor-victim privilege**

Under the sexual assault counselor-victim privilege, a victim of a sexual assault has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim.” A sexual assault counselor must be an employee of a rape crisis center or a trained volunteer. A trained volunteer must be supervised by a rape crisis center and have at least 30 hours of training in assisting victims of sexual violence and other related topics.

**Psychotherapist-Patient Privilege**

Under the psychotherapist patient privilege, “a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient’s mental or emotional condition.”

**Privilege with Respect to Communications to Clergy**

“A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.” A communication is confidential if it is made privately for the “purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.”

Florida law, however, does not offer an evidentiary privilege or confidentiality for peer support communications not involving health care practitioners. As such, first responder agencies may offer confidentiality for services administered internally, but that confidentiality would not supersede state or federal laws requiring disclosure.

When dealing with civil claims or defenses based on a state law, the Federal courts can interpret the privilege of evidence and witnesses in accordance with state law. This does not apply, however, to cases based solely on federal claims, or to cases based on both state and federal claims.

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17 Section 90.5036, F.S.
18 Section 90.5035, F.S.
19 Section 90.503, F.S.
20 Section 90.505(2), F.S.
21 Section 90.505(1)(b), F.S.
22 Fed. R. Evid. 501
The Florida Supreme Court and Evidentiary Privileges

The Florida Evidence Code as enacted by the Legislature contains both procedural and substantive law for the courts to apply. However, rules of evidence that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant’s right of confrontation.24 A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court’s ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.25

Peer Support Laws

Several states including Oregon, Hawaii, Colorado, Washington, and Mississippi offer evidentiary privileges for peer support personnel covering communications between first responders and peer support personnel. Oregon,26 Hawaii,27 Colorado,28 and Washington29 require peer supporters to be trained in providing emotional and moral support to first responders and must be designated by the agency for their role(s). Peer supporters in Mississippi must be a law enforcement officer, fireman, or emergency medical technician with a peer support certification from the State Board of Health or the Department of Public Safety.30

In four of the five example states, all but Washington, the peer support privilege does not cover admissions to criminal conduct, information relating to the abuse of spouses, children, or the elderly, or threats of suicide or homicide. Mississippi adds that the privilege does not apply if the peer supporter was a witness, party, or responder to the incident that lead to the peer support event, which is Washington’s only exception to the privilege.

Mississippi is the only state of the five example states that makes it a criminal act to reveal or attempt to coerce another to reveal the privileged communication.31

III. Effect of Proposed Changes:

The bill allows first responders to have privileged communications with individuals who provide peer-to-peer support to them. As defined by the bill, a first responder is law enforcement officers, fire fighters, emergency medical technicians, public communications officers, dispatchers, 911

24 In re Amendments to the Fla. Evidence Code, 782 So. 2d 339, 341 (Fla. 2000) The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.
25 In re: Amendments to the Fla. Evidence Code, 144 So. 3d 536, 537 (Fla. 2014).
29 Wash. Rev. Code Ann. § 5.60.060. The Washington peer support privilege also applies to jail staff.
31 A misdemeanor in Mississippi is punishable by up to 6 months in jail and a $500 fine.
operators and other phone system operators whose job duties include providing support or services to first responders. The individuals who provide this peer-to-peer support must have experience working as or with a first responder regarding physical or emotional conditions associated with their employment.

The person providing peer-to-peer support may not testify in any civil, criminal, administrative, or disciplinary proceeding regarding information obtained during their peer-to-peer support. Additionally, people who provide peer-to-peer support may not divulge information regarding their support of first responders. However, a person providing peer support may testify or divulge information if:

- The person providing peer support is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder.
- The first responder agrees, in writing, to allow the person to testify or divulge information related to the peer-to-peer support.
- The person providing peer support has reason to fear for the safety of the first responder, another person, or society. The person providing peer support may relay information based on this fear to the potential victims, appropriate family members, or law enforcement or other authorities. If a person providing peer support discloses information based on the above, there is no liability or cause of action based on the disclosure.

The bill is effective July 1, 2020

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or received states-shared revenues.

B. Public Records/Open Meetings Issues:

Article 1, s. 24 of the Florida Constitution requires exemptions from public records to state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. The Legislature may adopt exemptions from public records and public meetings by a general law that is passed by two-thirds vote of each house.

To the extent that peer support communications are made in a record, those records may be public records that must be disclosed under the public records law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.
E. Other Constitutional Issues:

The bill exempts communications between first responders and peer supporters from being used in any criminal proceeding. The Confrontation Clause of the 6th amendment to the United States Constitution grants criminal defendants a right to confront their accusers. Criminal defendants have a right to cross examine prosecution witnesses for bias and impeachment purposes.

There is conflicting case law on this. Criminal defendants have a right to confront, and impeach, witnesses based on their juvenile records if they are relevant, despite any law regarding strict confidentiality of those records.\textsuperscript{32} However, criminal defendants are not entitled to inspect confidential records, and courts must use a balancing approach to protect the interests of the defendant and verify any relevant exculpatory evidence while likewise protecting the confidentiality of the information.\textsuperscript{33}

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may limit the availability of evidence in civil trials against first responder agencies.

C. Government Sector Impact:

The bill may limit the availability of information to first responder agencies when engaging in disciplinary functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 111.09 of the Florida Statutes.


IX. Additional Information:

A. Committee Substitute – Statement of Changes:
   (Summarizing differences between the Committee Substitute and the prior version of the bill.)
   None.

B. Amendments:
   None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
The Committee on Judiciary (Perry) recommended the following:

**Senate Amendment**

Between lines 52 and 53
insert:
(d) The first responder admits during such peer-to-peer support to committing a criminal act. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.
A bill to be entitled

An act relating to peer-to-peer support for first responders; creating s. 111.09, F.S.; defining terms; prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances; providing exceptions; prohibiting liability and a cause of action under certain circumstances; providing an effective date.

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

Section 1. Section 111.09, Florida Statutes, is created to read:

111.09 Peer-to-peer support for first responders.—

(1) For purposes of this section, the term:

(a) “First responder” has the same meaning as provided in s. 112.1815 and includes public safety communications officers, dispatchers, and 911 or other phone system operators whose job duties include providing support or services to first responders.

(b) “Health care practitioner” has the same meaning as provided in s. 456.001.

(c) “Peer-to-peer support” means any conversation or communication between a first responder and a person who is not a health care practitioner but who has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment.

(2) A person who is not a health care practitioner and who provides peer-to-peer support to a first responder may not testify in any civil, criminal, administrative, or disciplinary proceeding or otherwise divulge information obtained during such peer-to-peer support, except when any of the following occur:

(a) The person providing peer-to-peer support is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder, in which case such information may be divulged but is limited to the scope of the proceeding.

(b) The first responder agrees, in writing, to allow the person to testify about or divulge information related to the peer-to-peer support.

(c) There are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the first responder, another person, or society, and the person providing peer-to-peer support communicates the information only to the potential victims, appropriate family members, or law enforcement or other appropriate authorities. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.

Section 2. This act shall take effect July 1, 2020.
To: Senator David Simmons, Chair
   Committee on Judiciary

Subject: Committee Agenda Request

Date: October 23, 2019

I respectfully request that Senate Bill #160, relating to Peer-to-peer Support for First Responders, be placed on the:

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

W. Keith Perry
Senator Keith Perry
Florida Senate, District 8
The Florida Senate

APPEARANCE RECORD

Meeting Date

Topic: FOR

Name: Wayne "Bernie" Berrosta

Job Title: President

Address: 343 W. MADISON ST

Phone: 381-231-9119

Email: Bernie@FPPF.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [✓] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: Florida Professional Fire Fighters

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.
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

(Meeting Date)

Topic	Peer-to-Peer Support for First Responders

Name	Meridian Brock Stanfield

Job Title	Director of Legislative & Cabinet Affairs

Address	PL 17, The Capitol

Phone	(850) 413-2890

Email	Meridian.Stanfield@myfloridacfo.com

Speaking: 

Representing	Department of Financial Services

Appearing at request of Chair: 

Lobbyist registered with Legislature:

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date
11/5/19

SB 160
Bill Number (if applicable)

Topic

Name
Steve Zona

Job Title
President FOP Lodge 5-30

Address
5570 Beach Blvd

Phone
398-1010

State
FL

State Zip
32207

Email

Speaking:

[ ] For  [ ] Against  [X] Information

Waive Speaking:

[ ] In Support  [ ] Against

(The Chair will read this information into the record.)

Representing
Florida FOP

Appearing at request of Chair:

[ ] Yes [X] No

Lobbyist registered with Legislature:

[ ] Yes [X] No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date 11/5/19

Bill Number (if applicable) SB 140

Topic Peer to Peer

Name McKale

Job Title Lobbyist

Address 300 E Brevard Street

City Tallahassee

State FL

Zip 32301

Phone

Email

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida PBA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date 11/05/2019

SB160

Bill Number (if applicable)

Topic Peer-to-peer Support for First Responders

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Tallahassee, FL 32317

Phone 863-287-8438

Email garywhester@gmail.com

Representing Florida Police Chiefs 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.
I. Summary:

SB 162 requires that, if an agency seeks declaratory relief that certain public records are exempt from inspection and copying (or are confidential and exempt from inspection and copying), and the court determines that the records are not exempt or not confidential and exempt, the court must assess the reasonable costs of enforcement, including attorney’s fees, against the agency that sought the declaratory relief and in favor of the named respondent to the action.

II. Present Situation:

Every person has the right, under the Florida Constitution, to “inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf,” except exempt or confidential records.\(^1\)

Generally, “all state, county, and municipal records are open for personal inspection and copying by any person.”\(^2\) “Public records” are “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”\(^3\)

An agency is “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including … the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business

\(^1\) Fla. Const. art I, s. 24.
\(^2\) Section 119.01(1), F.S.
\(^3\) Section 119.011(12), F.S.
entity acting on behalf of any public agency.”

Providing access to public records is a duty of each agency.

Custodians of public records are required to allow inspection and copying of public records “at any reasonable time, under reasonable conditions, and under” the custodian’s supervision. The custodian must acknowledge all requests to inspect or copy records and respond to those requests in good faith. A good faith response includes making reasonable efforts to determine whether the requested records exist and the records’ location. If the custodian contends that the requested records are exempt from inspection and copying, the custodian must state the basis for the exemption, including a citation to the statute creating the exemption, and provide the explanation in writing if requested by the person seeking to inspect or copy the records.

Section 16.60., F.S., creates a public records mediation program, requiring the Office of the Attorney General to employ one or more mediators to mediate disputes involving access to public records. This mediation is voluntary and nonadversarial, and is aimed at assisting parties in “exploring settlement alternatives,” although “decisionmaking authority rests with the parties.” Section 16.60, F.S., says nothing about when mediation is appropriate or required. It appears to concern disputes that have not reached the stage of a court action.

An agency seeking guidance on the exempt or confidential status of requested records may seek an Attorney General Opinion on the issue. The Attorney General has a compulsory duty to give opinions if requested by the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate. The Attorney General has the discretionary authority to give opinions if requested by a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision.

An agency seeking guidance on the exempt or confidential status of requested records may also file a declaratory action seeking a declaration that the records in question are not public records subject to inspection and copying. A court’s decision in a declaratory action “has the force and effect of a final judgment.”

If an agency denies a records request, the person making the request may file a complaint with a state attorney or file a civil action alleging that the agency’s failure to allow inspection or copying of the requested records is a violation of public records law. When such an action is

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4 Section 119.011(2), F.S.
5 Section 119.01(1), F.S.
6 Section 119.07(1)(a), F.S.
7 Section 119.07(1)(c), F.S.
8 Id.
9 Section 119.07(1)(e)-(f), F.S.
10 Section 16.60(1), F.S.
11 Arezaga v. Board of Cty. Com’rs of Hillsborough Cty., 935 So. 2d 640, 642 (Fla. 2d DCA 2006).
12 Section 16.01(3), F.S.
13 Id.
14 Section 86.011, F.S.
filed, the court is required to set an “immediate hearing.” If such a civil action against an agency is required to enforce the public records law, and the requestor gave 5 days’ notice before filing the civil action, the court is required to award the costs of enforcement, including reasonable attorney’s fees, against the agency, if the court finds that the agency “unlawfully refused” to release the records. Refusals needn’t be in bad faith to be “unlawful,” and the prevailing party is entitled attorney’s fees in any civil action against an agency “when the trial court finds that the public agency violated a provision of the Public Records Act in failing to permit a public record to be inspected or copied.”

A willful and knowing violation of the public records laws subjects public officers to fines, suspension, removal, impeachment, or for certain violations, criminal liability.

III. Effect of Proposed Changes:

This bill amends s. 119.07, F.S., requiring a court to impose the costs of enforcement, including reasonable attorney fees, upon an agency if that agency files a declaratory action seeking a declaration that certain records are exempt or confidential and exempt and the court determines that the requested records are not exempt or not confidential and exempt. The bill essentially grants to respondents to agency declaratory actions the same right to attorney fees and costs as are currently afforded by s. 119.12, F.S. This statute grants attorney fees and costs to those who prevail in a civil action against an agency to enforce the public records law.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state ta shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

15 Section 119.11, F.S.
16 Section 119.12, F.S.
17 Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120, 128 (Fla. 2016).
18 Section 119.10, F.S.
E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would decrease costs and fees for prevailing respondents to declaratory actions filed by agencies seeking declarations that requested public records are exempt from disclosure.

C. Government Sector Impact:

An analysis from the Department of Legal Affairs has been requested, though none yet completed. The bill would increase costs and fees for nonprevailing agencies filing declaratory actions seeking declarations that requested public records are exempt from disclosure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.07.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.
A bill to be entitled
An act relating to public records; amending s. 119.07,
F.S.; requiring a court to assess the reasonable costs
of enforcement against an agency upon the court’s
determination in an action for a declaratory judgment
that certain records are not subject to a public
records exemption; providing an effective date.

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

Section 1. Subsection (9) is added to section 119.07,
Florida Statutes, to read:
119.07 Inspection and copying of records; photographing
public records; fees; exemptions.—
(9) If an agency files an action for declaratory judgment
for a declaration that certain public records are exempt, or
confidential and exempt, from subsection (1) and s. 24(a), Art.
I of the State Constitution, and the court determines that the
records are either not exempt or not confidential and exempt,
the court must assess the reasonable costs of enforcement,
including reasonable attorney fees, against the responsible
agency for the benefit of the named respondent.

Section 2. This act shall take effect July 1, 2020.
To: Senator David Simmons, Chair  
Committee on Judiciary  

Subject: Committee Agenda Request  

Date: October 15, 2019  

I respectfully request that Senate Bill #162, relating to Public Records, be placed on the:  

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

W. Keith Perry  
Senator Keith Perry  
Florida Senate, District 8  

File signed original with committee office  
S-020 (03/2004)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date: 11.5.19

Bill Number (if applicable): 86248

Topic: COUNTY ATTORNEY PROFESSION

Name: LAURA YOUMANS

Job Title: LEGISLATIVE COUNSEL

Address: 100 N. MONROE ST

Phone: 294-1738

Email: LYOUMANS@floridastate.gov

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date: 11/15/19

Bill Number (if applicable): 248


Name: Edward G. Labrador, Esq.

Job Title: Legislative Counsel

Address: 100 S. Andrews Ave; Main Library 8th FL

City: Ft. Lauderdale

State: FL

Zip: 33301

Phone: 954-826-1155

Email: elabrador@broward.org

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing: Broward County Bd. of County Commissioners

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
Meeting Date: 11/5/19

Topic: Public Records Exemption County Asst. County Attorneys

Name: BAEUER LAIL

Job Title: Intergovernmental Affairs Officer

Address: 35283 McDonald Street, Dade City, FL 33525

Phone: 813-695-1378

Email: lail@pascocountyfl.gov

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: [ ] Pasco County [ ] City

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] 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

Meeting Date: 11/5/2019

Topic: Public Records

Name: Cari Roth

Job Title: 

Address: 215 S. Monroe St. Suite 815

Tallahassee, FL 32301

Phone: 850.999.4100

Email: CROTH@cleanmnd.com

Speaking: [ ] For [ ] Against [ ] Information

Representing: Charlotte County

Appearing at request of Chair: [ ] Yes [X] No

[ ] Waive Speaking [X] In Support [ ] Against

(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

Meeting Date
11-6-19

Bill Number (if applicable)
SB 248

Topic
ATTORNEY

Name
SEX BUDS CAY COUNTY FL. HOTELS

Job Title
OWNER

Address
2308 HWY 21

Phone
904.415.3221

Email
SEX BUDS CAY COUNTY FL.

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

Representing
CLAY 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 (10/14/14)
The Florida Senate  
BILL ANALYSIS AND FISCAL IMPACT STATEMENT  
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 248
INTRODUCER: Senator Hooper
SUBJECT: Public Records/County Attorneys and Assistant County Attorneys
DATE: November 4, 2019

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

I. Summary:

SB 248 creates a public record exemption for information that could identify or locate current or former county attorneys or assistant county attorneys and their spouses and children.

County attorneys are selected by the board of county commissioners and provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and initiate and defend civil actions in court on behalf of the county.

The bill exempts from public disclosure the following information that relates to current or former county attorneys or assistant county attorneys:

- Their home addresses, telephone numbers, dates of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2020.
II. Present Situation:

Public Records Law

Overview

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.\(^1\) This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.\(^2\)

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.\(^3\) The Public Records Act states:

> It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.\(^4\)

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

Legislative and Judicial Records

The Public Records Act does not apply to legislative or judicial records.\(^5\) Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Definition

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.\(^6\) The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”\(^7\)

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\(^1\) FLA. CONST., art. I, s. 24(a).
\(^2\) Id.
\(^3\) Public records laws are found throughout the Florida Statutes.
\(^4\) Section 119.01(1), F.S.
\(^6\) Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”
\(^7\) Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc., 379 So. 2d 633, 640 (Fla. 1980).
Access

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

Exemptions

The Legislature, alone, has the authority to create an exemption to public records requirements. An exemption must be created by general law and must specifically state the public necessity justifying the exemption. An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, and the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.

“Confidential and Exempt” or “Exempt” Designations

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.” Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.

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8 Section 119.07(1)(a), F.S.
9 Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
10 FLA. CONST., art. I, s. 24(c).
11 Id.
12 Section 119.15(6)(b)1., F.S.
13 Section 119.15(6)(b)2., F.S.
14 Section 119.15(6)(b)3., F.S.
15 The bill may, however, contain multiple exemptions that relate to one subject.
16 FLA. CONST., art. I, s. 24(c) and FLA. CONST., art., X, s. 12(e).
17 If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. WFTV, Inc. v. The Sch. Bd. of Seminole, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
18 Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).
Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,\(^{19}\) with specified exceptions.\(^{20}\) It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.\(^{21}\) The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.\(^{22}\)

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee’s (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.\(^{23}\)

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.\(^{24}\) An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.\(^{25}\)

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.\(^{26}\) This exemption applies to any agency that holds anyone’s social security number, including those belonging to the personnel of

\(^{19}\) Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

\(^{20}\) Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

\(^{21}\) Section 119.15(3), F.S.

\(^{22}\) Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

\(^{23}\) Section 119.071(4)(a) and (b), F.S.

\(^{24}\) Section 119.071(4)(a)1., F.S.

\(^{25}\) Section 119.071(4)(a), F.S.

\(^{26}\) Section 119.071(5)(a)5., F.S.
that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.  

27 Section 119.071(5)(a)5.f. and g., F.S.

28 Section 119.071(4)(b)1., F.S.

29 Section 119.071(4)(b)2., F.S.

30 Section 119.071(4)(d)3., F.S.

31 Section 119.071(4)(d)5., F.S.

(2) Medical Information

An agency employee’s medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.  

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.  

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee’s information. Additionally, all of these exemptions have retroactive application.  

County Attorneys and Assistant County Attorneys

County attorneys are selected by the board of county commissioners to serve as the chief legal counsel for the county. They are authorized to appoint assistant attorneys to help in the performance of their duties and in the administration of the office. County attorneys provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and ordinances and initiate and defend civil actions on behalf of the county in state and federal court.

Because county attorneys are often tasked with, or directly involved in, firing disgruntled employees, prosecuting code enforcement violations, and resolving other controversial matters involving the use of someone’s land or the removal of animals for suspected neglect and abuse, they find themselves in difficult and emotionally-inflamed situations. Instances have been reported in which persons who felt that they were mistreated by the county attorney or who were angry with an outcome retaliated. Forms of retaliation included attempts to confront the attorney away from the office, posts of personal identifying information on social media in an effort to intimidate the attorney, and threats issued in person and online. As a result of one reported
instance, a law enforcement officer escorted a threatened county attorney for extended periods of
time to ensure his protection while traveling to meetings and hearings.\textsuperscript{32}

\textbf{III. Effect of Proposed Changes:}

\textbf{Section 1} amends s. 119.071(4)(d)2., F.S., to exempt certain information pertaining to current or
former county attorneys or assistant county attorneys from the public disclosure requirements of
the public record laws. The following information for a current or former county attorney or
assistant county attorney will be exempt:
- The county attorney or assistant county attorney’s home addresses, telephone numbers, dates
  of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of
  employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

\textbf{Section 2} contains the public necessity statement which explains why the exemption is
necessary. The public necessity statement provides that the release of the personal identifying
and location information could place current or former county attorneys or assistant county
attorneys in danger of being physically and emotionally harmed or stalked by a defendant or
other person. Accordingly, the statement asserts that the harm that may result from releasing the
information outweighs any public benefit that may be realized from the disclosure of the
information.

\textbf{Section 3} provides that the bill takes effect July 1, 2020.

\textbf{IV. Constitutional Issues:}

\textbf{A. Municipality/County Mandates Restrictions:}

Not applicable. The mandate restrictions in the State Constitution do not apply because
the bill does not require counties and municipalities to spend funds, reduce counties’ or
municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with
counties and municipalities.

\textbf{B. Public Records/Open Meetings Issues:}

\textit{Vote Requirement}

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for
final passage of a bill creating an exemption to the public records requirements.\textsuperscript{33}
Because this bill creates an exemption for current or former county attorneys or assistant
county attorneys, it requires a two-thirds vote of each house to be enacted.

\textsuperscript{32} Telephone interviews with the Florida Association of County Attorneys in Tallahassee, the Charlotte County Attorney’s
Office in Port Charlotte, and the St. Johns County Attorney in St. Augustine (October 30, 2019).

\textsuperscript{33} Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a “Vote or other action of a legislative house
. . . means the vote or action of a majority or other specified percentage of those members voting on the matter.” Accordingly,
this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.
Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement notes that this exemption is necessary to protect current or former county attorneys or assistant county attorneys and their families from being physically and emotionally harmed or stalked and is narrowly drawn to protect them. For this reason, the exemption does not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual or business that requests location information that is covered by the definition of “home address” in the bill will not be able to readily obtain that information from the records custodian. If the employee or the employee’s agency has taken the initiative and requested that the home address information be exempted from disclosure, the protected person will need to sign a waiver granting permission to the records custodian to release the information to the requestor.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies that hold identifying information exempted by this bill. The agencies may need to train staff in order for them to be able to comply with public records requests and perform any necessary redactions.
before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the 4th year after enactment instead of the 5th year. It can be reasoned, however, that advancing the scheduled review and repeal by 1 year is not problematic because the deviation is supported by the reasoning that a previous Legislature cannot bind this Legislature.

VIII. **Statutes Affected:**

This bill substantially amends section 119.071, Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.
A bill to be entitled
An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for the personal identifying and location information of current and former county attorneys and assistant county attorneys and the names and personal identifying and location information of the spouses and children of such attorneys; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—
(4) AGENCY PERSONNEL INFORMATION.—
(d)1. For purposes of this paragraph, the term:
(a) “Home addresses” means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.
(b) “Telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers’ compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt
from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person’s skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency’s office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, and abuse or the investigation or prosecution of complaints filed against health care practitioners or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel; and the names and locations of
262 abuse, child abandonment, child neglect, and child exploitation
263 or to provide services as part of a multidisciplinary case
264 review team; the names, home addresses, telephone numbers,
265 photographs, dates of birth, and places of employment of the
266 spouses and children of such personnel and members; and the
267 names and locations of schools and day care facilities attended
268 by the children of such personnel and members are exempt from s.
269 119.07(1) and s. 24(a), Art. I of the State Constitution.
270 u. The home addresses, telephone numbers, dates of birth,
271 and photographs of current or former county attorneys or
272 assistant county attorneys; the names, home addresses, telephone
273 numbers, photographs, dates of birth, and places of employment
274 of the spouses and children of current or former county
275 attorneys or assistant county attorneys; and the names and
276 locations of schools and day care facilities attended by the
277 children of current or former county attorneys or assistant
278 county attorneys are exempt from s. 119.07(1) and s. 24(a), Art.
279 I of the State Constitution.
280 3. An agency that is the custodian of the information
281 specified in subparagraph 2. and that is not the employer of the
282 officer, employee, justice, judge, or other person specified in
283 subparagraph 2. shall maintain the exempt status of that
284 information only if the officer, employee, justice, judge, other
285 person, or employing agency of the designated employee submits a
286 written request for maintenance of the exemption to the
287 custodial agency.
288 4. An officer, an employee, a justice, a judge, or other
289 person specified in subparagraph 2. may submit a written request
290 for the release of his or her exempt information to the
291

CODING: Words **strike** are deletions; words *underline* are additions.
5. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. This act shall take effect July 1, 2020.
October 14th, 2019

The Honorable David Simmons, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that SB 248, Public Records/County Attorneys and Assistant County Attorneys, be placed on the agenda to be heard in the Judiciary Committee.

I appreciate your consideration in this matter.

Sincerely,

Ed Hooper

Cc: Staff Director, Tom Cibula
Administrative Assistant, Joyce Butler
11/05/2019

Meeting Date

Topic: PUBLIC RECORDS

Name: CESAR GRAJALES

Job Title: COALITIONS DIRECTOR

Address: 200 W COLLEGE AVE

Street: TALLA HASSE

City: FT

State: FL

Zip: 32301

Phone: 786.260.9283

Email: cgrajales@belieb.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: AMERICANS FOR PROSPERITY

Appearing at request of Chair: [ ] Yes [X] 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)

Bill Number (if applicable)

Meeting Date

MAY 6 2019

Topic

Public Records

Name

SEXIBUDDY CLAY COUNTY FL HOMES

Job Title

SEX TOYS OF CLAY COUNTY

Address

3908 HWY 21

Phone

SPEECH

Email

SB 162

Amendment Barcode (if applicable)

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 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date

11/5/19

Bill Number (if applicable)

162

Topic

Name  Casey Cook

Job Title  Legislative Advocate

Address

PO Box 1757

PO Box 1757

Street

Tallahassee

F

State

Zip

32302

Phone

850 701 5701

Email

ccook@flcities.com

Speaking:  [ ] For  [ ] Against  [ ] Information

Waive Speaking:  [ ] In Support  [ ] Against

(The Chair will read this information into the record.)

Representing

Florida League of Cities

Appearing at request of Chair:  [ ] Yes  [ ] No

Lobbyist registered with Legislature:  [ ] Yes  [ ] No

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

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

S-001 (10/14/14)
I. Summary:

CS/SB 344 clarifies ambiguities in current law to better enable public guardians to meet the needs of their incapacitated wards.

The bill clarifies that public guardians are exempted from paying any court-related fees or charges normally assessed by clerks for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian’s ward. Currently, courts have the discretion to waive those costs and fees.

Finally, the bill allows a physician assistant or advanced practice registered nurse to complete a ward’s annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

The bill takes effect July 1, 2020.
II. Present Situation:

Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.\(^1\) Public guardians generally and primarily serve incapacitated people who have limited financial means.\(^2,3\)

According to the Department of Elder Affairs, which houses the Office of Public and Professional Guardians, the 17 public guardian programs in the state served 3,816 wards in Fiscal Year 2018-19.\(^4\) A program cost and activities report issued in March, 2019, stated that 42.00% of wards lived in nursing facilities, 22.99% lived in assisted living facilities, 15.40% lived in group homes, 6.31% were in hospitals, 5.55% lived in intermediate care facilities, and 4.04% were cared for in private homes. The remaining wards, who account for less than 4% of that population, were cared for in other living arrangements.\(^5\)

Circuit Court Clerks’ Duty to Provide Access to Public Records and Waive Fees

The clerks of the circuit courts are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request.\(^6\) Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.\(^7\) While these two provisions make clear that public guardians are entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

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1 Section 744.2007(1), F.S.
2 Section 744.2007(3), F.S.
3 The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.
4 Telephone interview with Scott Read, Legislative Affairs Director for the Department of Elder Affairs, in Tallahassee, Fla. (October 31, 2019).
6 Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. Section 28.345(1), F.S.
7 Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.
Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians

Florida’s extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the budget of the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward. An additional statute provides that a court may waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward for whom a public guardian has been appointed. The court’s ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

Annual Guardianship Plan and Physician’s Report

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward’s condition, including the ward’s current needs and how those needs will be met in the coming year. The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A resume of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period and which contains an evaluation of the ward’s condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.

As noted above, the majority of public guardians’ wards live in facilities where physicians seldom visit. However, because the statute specifically requires a physician’s report, courts will not accept the signature of a physician’s assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

III. Effect of Proposed Changes:

Clarifying Language for Court-related Fees and Charges

The bill adds language to s. 28.345(3), F.S., to clarify that public guardians are exempted from the clerks’ assessment of fees and charges. This is accomplished by stating that the “entities listed in subsections (1) and (2),” the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

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8 Section 744.2008(1), F.S.
9 Section 744.2008(2), F.S.
10 Section 744.3675, F.S.
11 Section 744.3675(1)(b), F.S.
Court’s Discretion to Waive Court Costs and Filing Fees

Section 744.2008(1), F.S., is also amended for consistency to clarify that filing fees will not be assessed against a public guardian as a cost of administration. By deleting the phrase “including filing fees” the language makes clear that filing fees are not to be charged against the public guardian, which is consistent with the changes made to s. 28.345(3), F.S. If the phrase remained in the statute, it could create ambiguity as to whether filing fees may be assessed.

Section 744.2008(2), F.S., is amended to mandate that a court “shall” waive any court costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward for whom a public guardian has been appointed. Accordingly, courts will be prohibited from imposing court costs or filing fees under those circumstances.

Annual Guardianship Plan and Physician’s Report

The requirements for the annual guardianship plan that details a ward’s needs and how those needs will be met is amended to expand the type of medical professionals who may be involved. If a guardian requests a ward’s physician to complete the medical evaluation and prepare the report and the physician delegates that responsibility, a physician assistant or an advanced practice registered nurse may complete the examination and prepare and sign the report. The physician assistant must be acting pursuant to s. 458.347(4)(h), F.S., or s. 459.022(4)(g), F.S., by performing services delegated by a supervising physician in the physician assistant’s practice in accordance with his or her education and training, unless expressly prohibited by law or rule. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.12

By increasing the type of medical professionals who may complete the examination and determine a ward’s level of capacity for the annual report, the public guardian will be better able to meet the ward’s needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

12 The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.
C. Trust Funds Restrictions:
   None.

D. State Tax or Fee Increases:
   None.

E. Other Constitutional Issues:
   None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   None.

B. Private Sector Impact:
   None.

C. Government Sector Impact:

   The Florida Clerks of Court Operations Corporation (CCOC) states in its fiscal summary\textsuperscript{13} that the bill will have a slight indeterminate negative fiscal impact for some clerks who currently charge filing fees based on their interpretation of a statute requiring public guardians to pay filing fees from the budget of the office of public guardian.\textsuperscript{14} The analysis concludes by stating that the CCOC estimates the impact of the bill will be relatively small because many of the public guardian filings are accompanied by an affidavit demonstrating indigency such that most clerks currently waive those filing fees.

VI. Technical Deficiencies:

   None.

VII. Related Issues:

   None.


\textsuperscript{14} Section 744.2008(1), F.S., provides that “All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.”
VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Judiciary on November 5, 2019:**
The committee substitute differs from the underlying bill by:

- Deleting a reference to filing fees in s. 744.2008(1), F.S., that could create ambiguity as to whether clerks may charge public guardians for filing fees; and
- Clarifying that a physician assistant or advanced practice nurse practitioner may complete the ward’s annual exam and prepare and sign the report when those responsibilities are delegated by the ward’s physician in s. 744.3675(1)2., 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.
The Committee on Judiciary (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 42 - 69 and insert:

Section 2. Section 744.2008, Florida Statutes, is amended to read:

744.2008 Costs of public guardian.—

(1) All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.
(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall may waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.

2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. If the guardian has requested a physician to complete the examination and prepare the report and the physician has delegated that responsibility, the examination may be performed and the report may be prepared and signed by a physician assistant acting pursuant to s. 458.347(4)(h) or s. 459.022(4)(g), or by an advanced practice registered nurse.

And the title is amended as follows:
Delete lines 8 - 9
and insert:
F.S.; providing that certain examinations may be
performed and reports prepared
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 28.345, Florida Statutes, is amended to read:

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

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

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

(3) The exemptions from fees or charges provided in this section apply only to entities listed in subsections (1) and (2), state agencies and state entities, and the party represented by the agency or entity.

Section 2. Subsection (2) of section 744.2008, Florida Statutes, is amended to read:

744.2008 Costs of public guardian.—

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall may waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health
conditions and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.
2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. If the guardian has requested the primary physician to complete the evaluation and the physician has delegated the responsibility, the report may be prepared and signed by a physician assistant acting pursuant to s. 458.347(4)(d) or s. 459.022(4)(d), or by an advanced practice registered nurse acting pursuant to s. 464.012(3). The report must contain an evaluation of the ward’s condition and a statement of the current level of capacity of the ward. 
3. The plan for providing medical, mental health, and rehabilitative services in the coming year.

Section 4. This act shall take effect July 1, 2020.
Dear Mr. Chairman:

I respectfully request that Senate Bill 344 be placed on the agenda for the Judiciary Committee at your earliest convenience. The bill allows physician assistants and advanced registered nurse practitioners to complete evaluation paperwork required in guardianship plans under s. 744.3675, Florida Statutes. The bill also waives court and filing fees in guardian cases.

Thank you for your kind consideration of this request.

Sincerely,

Rob Bradley
Report for the
Office of Public and Professional Guardians
Florida Department of Elder Affairs

March 2019
FLORIDA PUBLIC GUARDIAN PROGRAMS:
PROGRAM COSTS AND ACTIVITIES

EXECUTIVE SUMMARY

In 1999, Sections 744.1012-744.2111 of the Florida Statutes established the Office of Public and Professional Guardians (OPPG), formerly the Statewide Public Guardianship Office. The OPPG is administratively housed in the Department of Elder Affairs (a social services agency model of public guardian service delivery), and covers approximately 100% (67) of the counties in the state. The Office of Public and Professional Guardian (OPPG) contracts for public guardian services with 17 local not-for-profit programs that utilize a variety of methods of operation (Department of Elder Affairs, 2018).

Since 2016, the program expanded its responsibilities to include regulating approximately more than 550 professional guardians statewide, which includes investigating, and if deemed appropriate, the discipline of guardians deemed in violation of the law. In 2018, the OPPG filed its first case where revocation of the guardian’s registration was recommended to the Florida Division of Administrative Hearings.

The purpose of this study was to examine all 17 state public guardian programs in Florida by using provider models; characteristics, needs, and outcomes of wards served; cost savings realized; and allocation of funds by the programs and the Department of Elder Affairs.

Program Administration

The 17 state public guardian programs were serving a total of 3,846 wards, with each program serving between 14 and 1,598 wards at the time of this study. A total of 778 wards are reported on waiting lists. Some programs have waiting lists, while other programs do not. The programs that do not have waiting lists receive sufficient supplemental dollars from supplemental funding sources, have openings available in the program, or executed agreements with supplemental funding sources require that the program serve on appointed cases. Programs have a mix of full-time and part-time staff. Programs report a total of 153 full-time staff and 30 part-time staff members. Eight programs have attorneys either as the program supervisor or as part of the staff.

Program Administration Time

Across activities, 9 programs recorded an average of 1,844 administrative hours per month. The greatest amount of time was spent on ward case management (mean = 65.73/ hours per week/262.90 hours per month). Being on call (mean = 59.82 hours per week/239.26 hours per month) was the second most time-demanding task, followed by clerical work (mean = 59.66 hours per week/238.65 hours per month).

Costs of Operating Programs

From July 1, 2017 to June 30, 2018, the 17 state public guardian programs report a state allotment of $5,842,313.57 for operating expenses. In addition to the state allotment, programs receive additional dollars from other sources such as the county funding, the United Way, Social Security Administration Representative Payee funding, FIG funding, private donations, and other funding. Programs supplemented their state allocation with private donations totaling $3,218,271.19. Within these funding parameters, the actual average yearly cost of serving a ward was $5,084.72, a 51.6% increase from the previously determined cost to serve a ward of $2,625.38. This increased number is consistent with other published costs per year of serving a ward: $2,857 in Florida in 1983 (Schmidt, Miller, Peters, & Lowenstein, 1988); $2,662 in Virginia in 1997 (Teaster, Schmidt, Abramson, & Almeida, 1999); and $2,955 in Virginia in 2002 (Teaster & Roberto, 2003). Overall, during the period June 1, 2018 to December 31, 2018, the programs’ estimated total cost savings to the state of Florida was $23,197,672.67.

Characteristics, Needs, and Outcomes of Wards

As of June 30, 2018, the guardians were serving a total of 3,846 wards. The programs serve as plenary guardian (77.20%), limited guardian (11.40%), and guardian advocate (5.01%). Slightly less than half of wards are female (47.89%). Wards are significantly older than the general population of Florida: 76.28% are 55 years of age and older. Wards range in age
from 18 to 99 years and have an average age of 65.43 years. Most wards live in a skilled nursing facility (42%) followed by an assisted living facility (22.99%). Only 4.04% of wards live in a private residence.

Nature of Incapacity
For the 17 programs, 42.70% of the wards had a developmental disability, 43.21% had a problem with mental illness, and 39.56% had a neuro-cognitive disability. For 44.67%, these conditions and others constituted multiple diagnoses.

Recommendations
This study of the costs of the Florida public guardian programs using data from 2018-2019 uses repeatedly published state-of-the-art analysis. This evaluation builds on earlier research and provides a model of examination for future work. Based on the findings, the following recommendations should enhance program operations and ward outcomes:

• Increased fiscal support by the State of Florida is critical to the success of the programs. The programs should not have to depend upon volunteers, donated services, or their own fundraising.
• Some programs have no persons on their waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs’ ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Ways to circumvent the ratio are ways to decrease the quality of services to the wards of the public guardian. It is critical to maintain the 1:40 ratio in all jurisdictions, regardless of incentive.
• Thoroughly document tangible and intangible cost savings by all programs. The programs produce substantial cost savings to the state—more than 3 ½ times the amount allocated—or $29,039,986.24 for one year. If the programs were provided with stable, recurring funding, they would still produce a cost savings to the state of $14,311,954.93.
• Programs should provide standardized administrative information (e.g., the administrative profile) at least annually, especially information regarding quality of life improvement and cost savings. Programs should document all cost savings activities as accurately as possible.
• Programs’ lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns and pro bono attorneys to meet the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.
• The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.
• Inconsistency in guardianship case management in the courts has been noted by programs, who report that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program’s budget. This practice should be stopped.
• Some circuits require that a program’s Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility. This practice, which overlooks an important feature of public guardianship, should end. The agency, not an individual, should be the named public guardian on orders.

Note: Although the term ward is not the preferred term to describe persons subject to guardianship, we use this term because is still the term used in Florida statutes.
FLORIDA PUBLIC GUARDIAN PROGRAMS:
PROGRAM COSTS AND ACTIVITIES

INTRODUCTION

Public guardianship refers to the appointment and responsibility of a public official or publicly funded entity to serve as a legal guardian in the absence of willing and responsible family members and friends to serve, or without resources to employ a private guardian (Schmidt, Miller, Bell, & New, 1981). In 2010, the first national study of public guardianship in over 25 years was published (Teaster, Schmidt, Wood, Lawrence, & Mendiondo, 2010). Findings revealed that nearly all programs were inadequately staffed and funded, that personnel are undertrained and undercompensated, and that data collection systems were limited and often poorly managed.

A number of interlocking factors are increasing the (unmet) need for public guardians: the “graying” of the population the aging of individuals with disabilities, the aging of caregivers, advancements in medical technologies affording new choices for chronic conditions and end of life care, rising reports of elder abuse, and growing mobility that has increased distances between and among family members (Teaster, et al., 2010). The national study by Teaster et al. (2010) revealed that wards of the public guardian were far complex than were wards over 25 years earlier. This is borne out in a study by Chamberlain (unpublished dissertation), indicating that public guardianship wards in long-term care facilities who were without friends or family had significant differences in instances of mental health issues, including a diagnosis of depression (unadjusted OR: 1.21), bipolar disorder (unadjusted OR: 1.80), and schizophrenia (unadjusted OR: 3.9) than their friended counterparts. Residents without family or friend contact had significantly higher means scores (higher is worse) on the depression rating scale, pain, and aggressive behavior scale. They had significantly lower scores on social engagement (lower is worse).

The impact of guardianship abuse is also considerable. In November 2016, the GAO reported that in just eight cases it examined in six states, guardians were found to have stolen more than $600,000 from the elderly whom they were entrusted to protect. The 2010 GAO report found that, from 1990 to 2010, guardians in 20 cases stole $5.4 million. Maltreatment of vulnerable older adults by guardians is a serious and growing problem that has been documented by reports, studies, government testimony, and the press (Aviv, 2017; GAO, 2010, 2016; Senate Special Committee on Aging Hearing 18 April 2018; NPR on Point, 2017). In response to these trends, most states are reforming their adult guardianship laws. Paid professional and not for profit guardianship service providers often operate along with public guardians.

These developments are positioned against a backdrop of societal changes including the development of managed health care and other new forms of health care delivery; changes in long-term care, including the rise of assisted living; recent and massive state budgetary constraints forcing cutbacks in social programs; escalating litigation in the health and long-term care arenas; and moves to deinstitutionalize people with disabilities and identify community-based care (mandated by the 1999 U.S. Supreme Court decision in the Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581).

In response to a documented need for guardians of last resort (Schmidt & Peters, 1987; Moye et al., 2016; Teaster & Roberto, 1997), the Florida Statewide Public Guardianship Office was established in 1999 by Sections 744.701-744.715 of the Florida Statutes. Public guardianship in the state of Florida was examined more than 25 years ago (Schmidt, Miller, Bell, & New, 1981) and more recently by Schmidt et al. (2017) and Teaster et al. (2010). Although many important changes have occurred, the state, home to a burgeoning aging population, still does not have statewide coverage for public guardianship. From the 1981 Schmidt study, it took 18 years to establish a potential statewide system of public guardianship. That span of time is surprising, given that a clear foundation was established through published assessment of unmet need (Schmidt & Peters, 1987) and scholarly and legislative activity at the time.

The Florida public guardian programs are now administratively housed in the Department of Elder Affairs and cover all of 67 counties in the state. The funding model established is the social services agency model and is identified as the “conflict of interest model” (Schmidt, Miller, Bell, & New, 1981; Teaster, et al., 2010). The local public guardian

1 Although the term ward is not the preferred term to describe persons subject to guardianship, we use this term because is still the term used in Florida statutes.
programs, typically non-profit entities, have contracts with the Office of Public and Professional Guardians (OPPG) and utilize a variety of methods of operation. At the time of this study, 17 programs are in existence (Department of Elder Affairs, 2019). The OPPG also has oversight of Florida’s private professional guardians.

An examination of the public programs in Florida, building upon work conducted on a national level by Teaster, et al., (2010) and in Florida (Schmidt, et al., 2017), was commissioned by the Florida Department of Elder Affairs due to the rising adult ward population, as well as the influx into the state of younger adults and their families. Florida is also home to a substantial number of racial and ethnic groups. The purpose of this study is to identify program costs and activities of the public guardian programs in Florida. To accomplish this task, aspects of the public programs are examined: costs and cost savings realized, allocation of funds for the public guardian programs and activities conducted in order to serve the wards.

The present examination was conducted by the Center for Gerontology at Virginia Tech working in concert with staff members from the OPPG, Florida Department of Elder Affairs. Virginia Tech provided a doctoral level student who assisted with data analysis as well as a health economist and applied econometrician and a nationally recognized scholar on guardianship.

**METHODOLOGY**

Examination of the Florida public guardian programs was modeled upon previous research (Burley, 2011; Moye et al., 2016; Schmidt, Miller, Peters, & Lowenstein, 1988; Schmidt et al., 2017; Teaster & Roberto, 2003; Teaster, Schmidt, Abramson, & Almeida, 1999; Teaster, et al., 2010). Individual public guardian programs and the Florida Department of Elder Affairs provided important information and feedback during the study period. In addition to time study data gathered by the programs, the researchers used state programmatic data and national data on wages for occupations.

**Data Collection Measures**

1. **Analysis of the program models.** Programs gathered information on wards served, activities of the program, and associated program total costs (including program non-labor cost and labor cost).

2. **Allocation of programmatic and state funds.** Recommendations for the allocation of state funds for public guardianship are made based on information from individual public guardian programs as well as from the staff from the Florida Department of Elder Affairs, Office of Public and Professional Guardians.

3. **Cost savings.** Labor costs to the state and cost savings for the state were calculated from information gathered through an online data collection instrument and literature reviews on relevant cost parameters.

4. **Characteristics of the wards.** Demographic and incapacity nature of the wards served, including their past, present, and future needs, were based on data provided by the programs and from the database of the Florida Department of Elder Affairs.

**Data Collection Procedures**

The study of the costs of the Florida public guardian programs took place in 2018-2019, with data collected on-line during the summer of 2018 and with participation by all programs. A collection instrument was developed by the Department of Elder Affairs in order to gather information on program activities and costs. The report estimated labor costs for 9 programs specifically due to data readiness; the 9 program average was used to estimate the rest of the programs' labor costs.

**Data Analysis**

The first step in the analysis process was to review the data for accuracy. The data set was examined to identify inappropriate values and outliers. Preliminary data analyses examined distributions, means, and standard deviations among variables for data cleaning purposes only. Descriptive statistics were used to create a profile of the programs and the wards and to assess program activities and associated costs. Differences in the characteristics between the ward
population and general population of Florida were assessed using Chi-Square analysis. Analyses were performed on the population of active wards as of June 30, 2018. Wards were considered active if documented by both the Florida Department of Elder Affairs, Office of Public and Professional Guardians and the individual public guardian programs.

FINDINGS

Findings are organized into two broad sections: program administration and characteristics of the wards served. The first section is a description of the programs, data on program staffing and administrative duties, an accounting of program administrative time, and program costs. The second section provides an in-depth examination of the wards enrolled in the programs and their associated costs and cost savings.

PROGRAM ADMINISTRATION

Description of the Programs

Seventeen public guardian programs serve people needing guardians of last resort. Eleven programs serve more than three counties. Brief program descriptions follow (i.e., program organization, client census on June 30, 2018).

Figure 1. Public Guardian Programs in Florida

OFFICES OF PUBLIC GUARDIANS LOCATIONS

1  LSF Guardianship Services, Inc.
   4600 Ida Ave, Ste. 920
   Pensacola, FL 32506
   (850) 439-1500

2  North Florida Office of Public Guardian, Inc.
   1025 E. Pineapple St, Ste. 20
   Tallahassee, FL 32308
   (850) 877-6500

3  Eighth Circuit Public Guardian
   2705 3rd St, Ste. 200
   Bradenton, FL 34201
   (941) 355-8226

4  Council on Aging of Volusia Co.
   425 N Ocean Shore Blvd.
   Daytona Beach, FL 32114
   (386) 255-4700

5  Fifth Circuit Public Guardian Corporation
   110 N.W. 1st Ave, 4th Floor
   Ocala, FL 34474
   (352) 341-6700

6  Seniors First, Inc.
   519 S. B. Stauffer Rd.
   Okeechobee, FL 34974
   (407) 297-3990

7  Aging Solutions
   16001 Sawfish Blvd.
   Lutz, FL 33558
   Br-wd: 8559 92, ASG
   H: 9398 (813) 92-1148
   P: 855-9564
   (727) 652-1188

County color/number represents areas served by the corresponding office location.

1. **North Florida Office of Public Guardian, Inc.** Florida law requires that each office of public guardian maintain a staff or contract with professionally qualified individuals to carry out guardianship functions, including an attorney experienced in probate areas and at least one other person who has a master’s degree in social work, a gerontologist or a nurse. OPG has on staff one attorney and three Master’s level social workers. The social work staff has more than 75 years of experience in social work and human services. There is also an accounts manager, paralegal, programs manager, fiscal/administrative assistant and file clerk on staff. Collectively, the staff has over 40 years of public guardianship experience. North Florida Office of Public Guardian, Inc. served 387 wards in the FY 17-18. There are currently 76 wards on the waitlist. SEMS application is the management software used to manage the wards. United Way Grants, fundraising and the 40-Hour Professional Guardianship Classes are supplemental funding sources.

2. **Eighth Circuit Public Guardian** is comprised of 2 full time staff, including 2 part time staff, and an Executive Director who also serves as the program’s attorney. The program is entirely state-funded, with previous assistance being provided by the Executive Director’s law firm. The program serves wards cross disability groups and age ranges, including those with mental illness-related incapacity, persons with developmental disabilities, and the elderly. The office covers six counties, and hundreds of square miles. Although funded for less, the program serves in excess of 70 to 80 wards in each fiscal year, and is presently running at capacity.

3. **Council on Aging of Volusia County, Inc.** Council on Aging of Volusia County Inc. has served as a Public Guardian since 2003. Through June 2014, Volusia County and in-kind legal representation by Community Legal Services of Mid Florida (CSMF) provided the only sources of funding for this program. With this funding arrangement, we have served 40 to 50 clients per year. In 2014 we received State funding to serve an additional 25 clients with continued legal representation from CSMF at a discounted rate for the additional 25 State funded clients. In 2018, CSMF advised us they could no longer provide representation due to their lack of funding. We currently have 38 on our waiting list and are proactively searching for Attorneys who will work on a Pro Bono basis to meet the State and local contract requirements to serve this population. We also are appointed as the Public Guardian for Flagler, Putnam and St. John’s County. However, without additional funding or legal representation, the program is unable to serve these counties.

4. **Fifth Circuit Public Guardian Corporation.** The program serves Marion, Citrus, Lake, Sumter, and Hernando counties, covering 4700 square miles and 130 wards per year. The program has a wait list of 48 persons. In almost all cases, the program serves as the plenary guardian. The staff consists of eight people. The Executive Director is also the program's in-house attorney. There are two full-time case managers who carry a caseload of 40 wards each and also do the court-required paralegal work for the agency. The full-time financial manager also prepares all of the mandatory Annual Plans and Accountings for all of the wards. The full-time bookkeeper pays all the wards bills and reconciles the bank statements. Both the bookkeeper and the financial manager also act as case manager for 10 to 15 wards each. The part-time Medicaid specialist handles all of the compliance issues for the program including Medicaid applications, renewals and monthly spend-down rules, facility licensing, evacuation plans for each ward and weekly census reports. The program’s college-graduate nurses must personally assess the wards once a quarter and review and update our records on current meds and treatment and update the information in the SEMS Applications, Inc. system and make recommendations to the case managers for future care and treatment. The community support includes three offices in the Marion County courthouse with rent, utilities, phone and computer at no charge, a local company that provides free background/skip trace checks for all new wards, pro bono attorneys who represent the petitioners to have the public guardian appointed for the ward, and nurses who are working at below-market pay. This community support totals approximately $68,000 per year donation.

5. **Seniors First, Inc.** The program is part of a senior citizen agency. Seniors First is supported from the county and state funds and also has a grant writer assigned through the agency for ward's needs not covered. The program has a strong Development Department which helps to fund the public guardian program through their fundraising projects. All public guardian staff persons have college degrees. The program works with over 42 different attorneys who receive credit through Legal Aid. The Executive Director, who is also a paralegal, does all legal pleadings in-house. All work is then sent to various attorneys to file on behalf of the program. Budget and financials are overseen by the agency CFO and the support staff to give the guardian program staff the ability to focus on day-to-day business to meet wards’ needs.
6. **Aging Solutions, Inc.** has 23 employees with one FTE coming on board the first of March 2019. The program served over 300 wards in FY 17-18; however, due to the large geographic area and the demand for public guardian services, the program has 310 people currently on the waiting list for services. Aging Solutions uses SEMS Applications, Inc. for software, as required by the state contract. The Executive Director of Aging Solutions is the sole owner of Adult Advocacy & Representation, Inc. (AAR) as allowed by statute, a for profit corporate guardian. AAR supplements funding to Aging Solutions when funds are not available or have run out. The program has also created a foundation so that it can accept funds that can be distributed to Aging Solutions at its discretion.

7. **Osceola Council on Aging.** The Osceola Council on Aging has 2 full time employees in the guardianship department. The program currently has opening to provide guardianship services to more Osceola residents, and has 15 people on the waiting list; however, the program is in need of legal assistance. The funding is not sufficient to pay an attorney for services, and the program has exhausted the amount of pro bono work that the attorneys currently supporting the program for the past 8 years can maintain. The program is in desperate need of attorneys to take pro bono cases or for funding to help pay for legal fees. Despite the limitations, the program works diligently to ensure the needs of all the wards in the program are met, including psycho-social, financially, and physically.

8. **Lutheran Services of Florida, Inc. (Sarasota)** has 10 fulltime staff and 2 part time staff. Two members of the staff sit on the Florida State Guardianship Association Board. Lutheran Services of Florida does maintain both a public and private side guardianship program to supplement state funding. In FY 7-18, the program served a total of 220 wards, with 38 on the waitlist. Lutheran Services of Florida –Sarasota currently uses SEMS Applications, Inc. for the client management software for both the public and private programs. The program receives funding from Sarasota County to supplement the indigent wards served.

9. **Tenth Circuit Public Guardian** has a total of 7 part time staff: Four are care managers; one is an office manager; and two co-executive directors. The Tenth Circuit Public Guardian served 66 indigent vulnerable adults for FY 17-18, which exceeded the program’s allotted funding. The program also has a charity division called The Guardianship Office that provides guardianship services for some of our indigent unfunded clients in the Tenth Circuit Public Guardian. The operating budget for the Guardianship Office is raised by private donation and time is also donated from professional guardians in the community.

10. **Lutheran Services of Florida, Inc. (Pensacola)** This program serves wards in the First Judicial Circuit, which is comprised of four counties. Currently there are 5 full time employees working an average of 40 hours per week. The program served 51 wards in the FY 17-18. All staff, with the exception of one, are registered guardians (the one non-professional guardian staff person having been hired in October of 2018). The goal is for the non-professional guardian employee to be registered as a professional guardian within one year of hire. All staff fully utilizes SEMS Applications, Inc. on-line, per the state contract. The only additional funding received by the is from collecting Representative Payee fees from those who receive Social Security benefits; however, the program currently compensates low-bono attorneys in the area at a prorated rate, receiving in-kind donations from the local attorneys to meet the needs of the program.

11. **Lee County Public Guardianship Program** serves as public guardian to approximately 180 indigent wards in FY 17-18, with another approximately 55 on the waiting list. The program has 2 part time and 1 full time program assistants, which answer phones, organize documents, and maintain ward case files. The program has a full time Executive Director who is also an attorney, 1 staff person who is an MSW, 1 who is an MACG, and 2 registered nurses. The program works closely with the hospital system, Baker Act providers, other residential care providers, as well as state and local agencies (APD, DCF, law enforcement). The program also works with private organizations and individuals. The program has developed an in-house database which allows for easy access to ward information. The majority of the wards served by the Lee County Public Guardian are wards with intellectual disabilities and the elderly. Lee County Public Guardian's Executive Director is required to be named personally in guardianship appointment letters, requiring that all major decisions in those areas be made by the individual program director and be available on an on-call basis.

12. **The Collier County and Charlotte County Public Guardian** consists of one program covering five counties. A private attorney, with a total of 4 fulltime staff members currently staffs this program. An additional staff person...
provides in-kind staff hour donations weekly, at no cost to the public guardian program. During FY 17-18, the program served nearly 200 wards, with 22 on a waiting list. The program uses SEMS Applications, Inc. for client management, as per the state contract, and receives most of its funding from the county. Additional cost savings include pro bono work provided by the Executive Director, who is an attorney, including serving as attorney for the AIP in guardianship cases, when appointed.

13. The Public Guardian Program of Indian River County, Inc. is a small program due to budget constraints. Currently, the program has one full-time staff person and one part-time. The Executive Director (full time) is required to seek alternate funding sources via community grants and comply with reporting requirements. Currently the program utilizes SEMS Applications, Inc. to maintain ward documentation as well as financial data. In FY 17-18 the program served 17 clients and currently maintains a waiting list of 5. The program seeks alternate funding from John's Island Community Service League and the Indian River County Hospital Taxing District.

14. Legal Aid Society of Palm Beach County, Inc., The Legal Aid Society of Palm Beach County, Inc. provides services through the work of 1.5 FT staff members for fiscal matters; 4.25 FT staff members for case management (2 with Masters of Social Work degrees and 2 are Nationally Certified Guardians); 1.0 FT paralegal; 1.7 FT administration/fiscal and 1.0 FT attorney/program director. The program served 163 wards for FY 17-18 and has 42 persons on the waiting list. The program documents its work through the EMS guardianship case management system and finances are tracked with quick books and excel. Funding is provided by the State of Florida in the amount of $270,878.00, Palm Beach County in the amount of $246,775.00 and supplemental funding by the Legal Aid Society in the amount of $152,982.00.

15. The Barry University School of Social Work, Office of the Public Guardian. The Barry University d/b/a OPG currently has a total staff of five social workers, one paralegal, one fiscal assistant, one associate director, and one executive director. Currently the office has two position openings for two social workers and one opening for an administrative assistant. When fully staffed, the total OPG staff members will be 12 staff members. Total wards served for FY 17-18 was 274 wards. The wait list is composed of 43 AIP's waiting adjudication. The client management software used for case notes and ward information is the SEMS Applications web-based database. The software used for the wards financial monitoring is a web-based QuickBooks application. The program's legal representation is pro-bono representation by Shutts & Bowen LLC/Edward O'Sheehan, Esq. The program serves as a practicum site for one master's candidate social work student intern who assists with the ward monitoring by providing 280 hours per practicum assignment usually lasting 6 months.

16. The Guardianship Care Group, Inc., uses private attorneys and limits their hourly rate. Staff members include 1 Administrator, 1 Clinical Director/Case Manager, 1 FT Case Manager, and 2 PT Case Managers. The program served approximately 75 wards during the fiscal year 17-18, and does not currently have any people awaiting services. It should be noted that Guardianship Care Group, Inc. serves in the same geographic area as Guardianship Program of Dade County, Inc. The program primarily serves those with developmental disabilities and does not receive supplemental funding from the county.

17. Guardianship Program of Dade County uses 56 FT staff dedicated to program efforts. GPDC utilizes a proprietary and copyrighted client management software, Guardianship Management Software (GMS), built by and for the public guardian program. GMS allows for live ward fiscal reconciliation, case management and tracking, e-filing, and file management. The GPDC has Letters of Understanding and a close working partnership with Jackson Memorial Hospital (Jackson Health System) that has assisted in the placement of indigent wards. GPDC also works closely with Florida International University's Department of Social Work's Internship Program to provide hands-on experience for FIU students while providing the program with additional staff support.

Although most programs are not-for-profit, Barry University Office of the Public Guardian is housed within a School of Social Work, two programs are housed within Councils on Aging, and one program is housed within a Legal Aid program.
Supplemental Funding

Seven programs receive supplemental funding from counties. Programs have noted that deficiencies in funding have led to the use of available donated community services. Programs have been receiving pro bono or low bono legal work, but the continuation of such donated legal work is burdensome to the community, and sustainability is questionable, particularly as the programs expand and serve additional clients. Some programs have accounted for this need by appointing an Executive Director who also serves as the staff attorney, a designated staff attorney, or a legal department, but funding limitations prohibit all programs from following this model. Programs’ lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns to meeting the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.

Inconsistency in guardianship case management in the courts has been noted by programs, stating that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program’s budget. Additionally, some circuits have required that the program’s Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility.

Program Features

Staff to client ratio. It is highly commendable that the state of Florida mandates a 1:40 staff to ward ratio. Florida is one of only eight states to mandate a ratio. Previous research in Florida 28 years ago established a ratio of 1:30 (Schmidt, Miller, Bell, & New, 1981). Subsequent research in Virginia and Washington, the only other states in which a cost analysis was conducted and states with an administrative structure similar to Florida, established an updated ratio of 1:20 (Schmidt, Teaster, Abramson, & Almeida, 1997). The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.

The Office of Public and Professional Guardian (OPPG) awards contracts for local offices in accordance with 744.2006(1), Florida Statutes, a co-recommendation between the OPPG and the Chief Judge of each judicial circuit. Parties must meet the following qualifications for OPPG appointment as a public guardian:

1. A Florida resident and at least 18 years of age
2. Completed the approved forty-hour professional guardianship-training course as well as any applicable approved continuing education credits
3. Passed the Florida Professional Guardianship Competency Examination or have been granted a waiver
4. Completed OPPG registration
5. Knowledge of the legal process and knowledge of the social services available to meet the needs of incapacitated persons
6. Staff levels to meet Florida Statutes governing public guardianship, including an attorney who has experience in probate and another person who has a master’s degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner
7. If a non-profit corporate guardian, a tax exempt status from the United States Internal Revenue Service is required
8. Verification that the interested party does not hold a position that would create a conflict of interest.

Serving as a public guardian requires an appointment and contract from the OPPG. Appointment by the OPPG is for a term of four years; however, the contract with the funding source may be subject to annual appropriation.

Programs and Program Administration

As of June 30, 2018, Florida’s 17 public guardian programs were asked to provide the numbers of wards they were serving (Table 1). On that day, the programs were serving 3,846 wards, with the number of wards per program ranging from 14 (Public Guardian Program of Indian River County, Inc.) to a high of 1,598 wards (Guardianship Program of Dade County). The total number of 778 wards on waiting lists ranged from a low of 0 (i.e., Eighth Circuit Public Guardian, Guardianship Program of Dade County) to a high of 310 (Aging Solutions, Inc.). Some programs have no persons on their
waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs' ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Any program exceeding the staff to ward ratio must do so with the written approval of the OPPG.

Table 1. Program Catchment Areas and Number of Wards Served as of June 30, 2018

<table>
<thead>
<tr>
<th>Program</th>
<th>Catchment Area</th>
<th>Wards Served</th>
<th>Waiting List</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>Brevard, Hillsborough, Manatee, Pasco and Pinellas Counties</td>
<td>329</td>
<td>310</td>
</tr>
<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>Broward County</td>
<td>274</td>
<td>43</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>Charlotte, Collier, DeSoto, Glades, and Monroe Counties</td>
<td>198</td>
<td>5</td>
</tr>
<tr>
<td>Council on Aging of Volusia County</td>
<td>Volusia, Flagler, Putnam, and St. Johns Counties</td>
<td>68</td>
<td>38</td>
</tr>
<tr>
<td>Eighth Circuit Public Guardian</td>
<td>Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties</td>
<td>64</td>
<td>0</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>Marion, Citrus, Hernando, Lake, and Sumter Counties</td>
<td>141</td>
<td>48</td>
</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>Miami-Dade County</td>
<td>1,598</td>
<td>0</td>
</tr>
<tr>
<td>The Guardianship Care Group, Inc.</td>
<td>Miami-Dade County</td>
<td>81</td>
<td>0</td>
</tr>
<tr>
<td>Lee County Public Guardianship Program</td>
<td>Lee, Hendry, and Sarasota Counties</td>
<td>179</td>
<td>53</td>
</tr>
<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>Palm Beach, Martin, Okeechobee, and St. Lucie Counties</td>
<td>151</td>
<td>42</td>
</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>Indian River County</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>Osceola Council on Aging</td>
<td>Osceola County</td>
<td>30</td>
<td>15</td>
</tr>
<tr>
<td>Seniors First, Inc.</td>
<td>Orange County</td>
<td>111</td>
<td>22</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>Escambia, Okaloosa, Santa Rosa, and Walton Counties</td>
<td>52</td>
<td>68</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>DeSoto, Manatee, and Sarasota Counties</td>
<td>104</td>
<td>38</td>
</tr>
<tr>
<td>Tenth Circuit Public Guardian</td>
<td>Hardee, Highlands, and Polk Counties</td>
<td>65</td>
<td>15</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td><strong>3,846</strong></td>
<td><strong>778</strong></td>
</tr>
</tbody>
</table>
Program Staffing

Paid Staff. The programs use a mix of full-time and part-time staff (Table 2). Part-time staff members are reported as working a total of 30 or fewer hours in one week. Programs report a total of 153 full-time staff and 30 part-time staff. Ward Managers/Professional Guardians are the most frequently reported staff members. Program descriptions indicate that eight programs have attorneys either as the executive director or as part of the staff.

Table 2. Paid Staff Members

<table>
<thead>
<tr>
<th>Position Title</th>
<th>Full Time</th>
<th>Part Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Director (Attorney/J.D.)</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Executive Director (Not Attorney)</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Chief Financial Officer/Financial Director</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>General Counsel/Senior Attorney</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Staff Attorney</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Program Area Director (Operations/Grants/Enrollments/Entitlements/IT)</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Case Management Director/Clinical Director</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Case Manager (Professional Guardian)</td>
<td>56</td>
<td>14</td>
</tr>
<tr>
<td>Case Manager (Non-Professional Guardian)</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>Office Manager</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Health/Financial/Benefits/Inventory/Entitlements Staff</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Legal Assistant</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Financial Support Staff</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Accounting Staff</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Assistant/Receptionist (Operations/Financial/Case Management)</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>File Clerk/Intern</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Contracted Professional Staff (Nurse/Gerontologist/LCSW/MSW/CPA)</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>153</td>
<td>30</td>
</tr>
</tbody>
</table>

Rates of Payment for Staff Positions

Rates of Payment for Guardianship Program Staff Compared to Program Staff Positions Using Bureau of Labor Statistics Wages. For a variety of commensurate positions above, the Bureau of Labor Statistics ranges for hourly wages are captured below for Business Managers ($69.01-$33.71), Case Managers ($65.00), Executive Directors and Staff Support ($94.95-$28.56), Legal Assistants ($47.25-$24.61), Office Managers and Staff Support ($70.01-$18.24), General Administrative Support Staff ($55.87-$15.51), Attorneys and Law Clerks ($68.22-$27.84).
Table 3. Occupations in Guardianship Programs and Corresponding Wages of Similar Occupations in the Bureau of Labor Statistics (BLS)

<table>
<thead>
<tr>
<th>Guardianship Programs Occupation</th>
<th>BLS Occupations</th>
<th>Hourly Wage</th>
<th>Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Managers</td>
<td>Accountants and Auditors</td>
<td>$37.46</td>
<td><a href="https://www.bls.gov/oes/current/oes132011.htm">https://www.bls.gov/oes/current/oes132011.htm</a></td>
</tr>
<tr>
<td></td>
<td>Financial Specialists</td>
<td>$33.71</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#13-0000">https://www.bls.gov/oes/current/oes_nat.htm#13-0000</a></td>
</tr>
<tr>
<td></td>
<td>Financial Specialists, All Other</td>
<td>$36.84</td>
<td><a href="https://www.bls.gov/oes/current/oes132099.htm">https://www.bls.gov/oes/current/oes132099.htm</a></td>
</tr>
<tr>
<td></td>
<td>Financial Managers</td>
<td>$69.01</td>
<td><a href="https://www.bls.gov/oes/current/oes113031.htm">https://www.bls.gov/oes/current/oes113031.htm</a></td>
</tr>
<tr>
<td></td>
<td>Financial Examiners</td>
<td>$44.12</td>
<td><a href="https://www.bls.gov/oes/current/oes132061.htm">https://www.bls.gov/oes/current/oes132061.htm</a></td>
</tr>
<tr>
<td>Executive Director</td>
<td>Top Executives</td>
<td>$49.58</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm">https://www.bls.gov/oes/current/oes_nat.htm</a></td>
</tr>
<tr>
<td></td>
<td>Chief Executives</td>
<td>$94.25</td>
<td><a href="https://www.bls.gov/oes/current/oes111011.htm">https://www.bls.gov/oes/current/oes111011.htm</a></td>
</tr>
<tr>
<td></td>
<td>Executive Secretaries and Executive Administrative Assistants</td>
<td>$28.56</td>
<td><a href="https://www.bls.gov/oes/current/oes436011.htm">https://www.bls.gov/oes/current/oes436011.htm</a></td>
</tr>
<tr>
<td></td>
<td>Producers and Directors</td>
<td>$43.64</td>
<td><a href="https://www.bls.gov/oes/current/oes272012.htm">https://www.bls.gov/oes/current/oes272012.htm</a></td>
</tr>
<tr>
<td>Legal Assistant</td>
<td>Paralegals and Legal Assistants</td>
<td>$25.92</td>
<td><a href="https://www.bls.gov/oes/current/oes232011.htm">https://www.bls.gov/oes/current/oes232011.htm</a></td>
</tr>
<tr>
<td></td>
<td>Arbitrators, Mediators, and Conciliators</td>
<td>$35.11</td>
<td><a href="https://www.bls.gov/oes/current/oes231022.htm">https://www.bls.gov/oes/current/oes231022.htm</a></td>
</tr>
<tr>
<td></td>
<td>Legal Support Workers</td>
<td>$24.34</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#23-0000">https://www.bls.gov/oes/current/oes_nat.htm#23-0000</a></td>
</tr>
<tr>
<td>Category</td>
<td>Average Salary</td>
<td>URL</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------</td>
<td>------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Legal Support Workers</td>
<td>$24.66</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#23-0000">https://www.bls.gov/oes/current/oes_nat.htm#23-0000</a></td>
<td></td>
</tr>
<tr>
<td>Court Reporters</td>
<td>$28.88</td>
<td><a href="https://www.bls.gov/oes/current/oes232091.htm">https://www.bls.gov/oes/current/oes232091.htm</a></td>
<td></td>
</tr>
<tr>
<td>General and Operations Managers</td>
<td>$59.35</td>
<td><a href="https://www.bls.gov/oes/current/oes111021.htm">https://www.bls.gov/oes/current/oes111021.htm</a></td>
<td></td>
</tr>
<tr>
<td>Marketing and Sales Managers</td>
<td>$60.24</td>
<td><a href="https://www.bls.gov/oes/current/oes112011.htm">https://www.bls.gov/oes/current/oes112011.htm</a></td>
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</tr>
<tr>
<td>Marketing Managers</td>
<td>$70.01</td>
<td><a href="https://www.bls.gov/oes/current/oes112021.htm">https://www.bls.gov/oes/current/oes112021.htm</a></td>
<td></td>
</tr>
<tr>
<td>Sales Managers</td>
<td>$66.18</td>
<td><a href="https://www.bls.gov/oes/current/oes112022.htm">https://www.bls.gov/oes/current/oes112022.htm</a></td>
<td></td>
</tr>
<tr>
<td>Operations Specialties Managers</td>
<td>$55.62</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#43-0000">https://www.bls.gov/oes/current/oes_nat.htm#43-0000</a></td>
<td></td>
</tr>
<tr>
<td>Administrative Services Managers</td>
<td>$49.70</td>
<td><a href="https://www.bls.gov/oes/current/oes113011.htm">https://www.bls.gov/oes/current/oes113011.htm</a></td>
<td></td>
</tr>
<tr>
<td>Communications Equipment Operators</td>
<td>$14.02</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#43-0000">https://www.bls.gov/oes/current/oes_nat.htm#43-0000</a></td>
<td></td>
</tr>
<tr>
<td>Information and Record Clerks</td>
<td>$15.51</td>
<td><a href="https://www.bls.gov/oes/current/oes_nat.htm#43-0000">https://www.bls.gov/oes/current/oes_nat.htm#43-0000</a></td>
<td></td>
</tr>
<tr>
<td>Information and Record</td>
<td>$19.56</td>
<td><a href="https://www.bls.gov/oes/current/oes434199.htm">https://www.bls.gov/oes/current/oes434199.htm</a></td>
<td></td>
</tr>
</tbody>
</table>
Table 4 shows the average weekly time by occupation in the programs as well as the average total time. The hourly inputs per program are a function of size, such that exceptionally large programs, such as Dade, have large inputs across staff positions, while smaller ones, such as Indian River County, have smaller inputs of total time.

### Table 4. Average Weekly Time Inputs by Occupations in Guardianship Programs and the average of total time spent per week for each occupation*  

<table>
<thead>
<tr>
<th>Program</th>
<th>Occupation</th>
<th>Barry Univ.</th>
<th>Charlotte Collier</th>
<th>Dade</th>
<th>Guardianship Care Group</th>
<th>Indian River Co.</th>
<th>Legal Aid Soc. of PB</th>
<th>Osc. COA</th>
<th>Seniors First</th>
<th>10th Cir.</th>
<th>Avg. Hrs/Wk²</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accountant/Financial Specialist</td>
<td>32.00</td>
<td>283.25</td>
<td>-</td>
<td>-</td>
<td>2.97</td>
<td>1.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>79.8</td>
</tr>
<tr>
<td></td>
<td>Admin Support Staff</td>
<td>-</td>
<td>204.68</td>
<td>-</td>
<td>4.75</td>
<td>-</td>
<td>-</td>
<td>23.50</td>
<td>10.60</td>
<td>-</td>
<td>60.88</td>
</tr>
<tr>
<td></td>
<td>Attorney</td>
<td>-</td>
<td>102.71</td>
<td>-</td>
<td>3.80</td>
<td>-</td>
<td>4.50</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Case Manager</td>
<td>221.36</td>
<td>91.75</td>
<td>929.31</td>
<td>59.00</td>
<td>29.95</td>
<td>172.78</td>
<td>35.00</td>
<td>214.50</td>
<td>55.07</td>
<td>200.97</td>
</tr>
<tr>
<td></td>
<td>Executive Director</td>
<td>47.50</td>
<td>47.00</td>
<td>31.97</td>
<td>22.00</td>
<td>15.25</td>
<td>35.00</td>
<td>36.00</td>
<td>27.50</td>
<td>31.56</td>
<td>32.64</td>
</tr>
<tr>
<td></td>
<td>Legal Assistant</td>
<td>27.25</td>
<td>49.12</td>
<td>-</td>
<td>0.50</td>
<td>26.75</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>25.9</td>
</tr>
<tr>
<td></td>
<td>Office Manager</td>
<td>-</td>
<td>42.75</td>
<td>30.75</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>36.75</td>
</tr>
</tbody>
</table>

1. Average across programs with those occupations only.

*Table 4 denotes the time spent by staff in 9 of the Guardianship programs of Florida due to data availability. The 9 programs are: Barry University, Charlotte-Collier, Dade, Guardianship Care Group, Indian River County, Legal Aid Society of PB, Osceola COA, Seniors First, and Tenth Circuit.

Time study data were collected from nine guardianship programs that collect work time efforts for all staff within the programs for a week. Those weekly time inputs per occupation information is then multiplied by the hourly wage rates listed in Table 3 to estimate the weekly labor costs per program. The monthly labor costs is calculated by assuming constant weekly costs per month. The presented labor costs do not contain fringe and benefits therefore are lower bound estimates of the program labor costs. Due to data limitations, we assumed that non-labor program costs are constant over years. The labor costs are the major components of the program operation that are generally under-budgeted. These estimated labor costs therefore will provide a necessary estimation of the program needs financially.
<table>
<thead>
<tr>
<th>Programs</th>
<th>Hourly Wage Based on BLS</th>
<th>Financial Specialist</th>
<th>Admin Support Staff</th>
<th>Attorney</th>
<th>Case Manager</th>
<th>Executive Director</th>
<th>Legal Assistant</th>
<th>Office Manager</th>
<th>Total Labor Cost Per Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barry Univ.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>65</td>
<td>54.01</td>
<td>30.11</td>
<td>59.98</td>
<td>$19,135.01</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>32.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>221.36</td>
<td>47.50</td>
<td>27.25</td>
<td>-</td>
<td>$19,135.01</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>$1,360.64</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$14,388.40</td>
<td>$2,565.48</td>
<td>$20.50</td>
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<td>$19,135.01</td>
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<td>Cost/Month</td>
<td>$5,442.56</td>
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<td>-</td>
<td>-</td>
<td>$57,553.60</td>
<td>$10,261.90</td>
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</tr>
<tr>
<td>Charlotte-Collier</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>91.75</td>
<td>47.00</td>
<td>42.75</td>
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<td>$11,066.37</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$5,963.75</td>
<td>$2,538.47</td>
<td>-</td>
<td>$2,564.15</td>
</tr>
<tr>
<td>Cost/Week</td>
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<td>-</td>
<td>-</td>
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<td>$10,153.88</td>
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<td>$44,265.46</td>
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<tr>
<td>Cost/Month</td>
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<td>-</td>
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<td>$102,568.58</td>
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<td>$339,889.50</td>
</tr>
<tr>
<td>Dade</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>929.31</td>
<td>31.97</td>
<td>49.12</td>
<td>-</td>
<td>$84,972.37</td>
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<tr>
<td>Hours/Week</td>
<td>283.25</td>
<td>204.68</td>
<td>102.71</td>
<td>-</td>
<td>-</td>
<td>$2,835.00</td>
<td>$1,188.22</td>
<td>-</td>
<td>$1,844.39</td>
</tr>
<tr>
<td>Cost/Week</td>
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<td>$3,886.92</td>
<td>$5,431.04</td>
<td>-</td>
<td>-</td>
<td>$60,405.31</td>
<td>$1,726.56</td>
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<td>$68,676.61</td>
</tr>
<tr>
<td>Cost/Month</td>
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<td>$15,547.68</td>
<td>$21,724.16</td>
<td>-</td>
<td>-</td>
<td>$241,621.25</td>
<td>$5,915.41</td>
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</tr>
<tr>
<td>Guardian Care Group</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>59.00</td>
<td>22.00</td>
<td>30.75</td>
<td>-</td>
<td>$1,844.39</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$3,835.00</td>
<td>$1,188.22</td>
<td>-</td>
<td>$1,844.39</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$15,340.00</td>
<td>$4,752.88</td>
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<td>$27,470.42</td>
</tr>
<tr>
<td>Cost/Month</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$27,470.42</td>
</tr>
<tr>
<td>Indian River Co.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>29.95</td>
<td>15.25</td>
<td>0.50</td>
<td>-</td>
<td>$3,076.60</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1,946.75</td>
<td>$823.65</td>
<td>-</td>
<td>$3,076.60</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1946.75</td>
<td>$823.65</td>
<td>$15.06</td>
<td>-</td>
<td>$3,076.60</td>
</tr>
<tr>
<td>Cost/Month</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$360.81</td>
<td>$803.78</td>
<td>$29,246.1</td>
<td>-</td>
<td>$12,306.42</td>
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<tr>
<td>Legal Aid Soc. of PB</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35.00</td>
<td>36.00</td>
<td>-</td>
<td>-</td>
<td>$4,499.84</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>2.97</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4.50</td>
<td>-</td>
<td>-</td>
<td>$17,999.36</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>$126.28</td>
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<td>-</td>
<td>-</td>
<td>$11,230.70</td>
<td>$1,890.35</td>
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</tr>
<tr>
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<td>$505.14</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$44,922.80</td>
<td>$7,561.40</td>
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<td>$56,211.11</td>
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<tr>
<td>Oseola COA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35.00</td>
<td>36.00</td>
<td>-</td>
<td>-</td>
<td>$4,499.84</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>1.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4.50</td>
<td>-</td>
<td>-</td>
<td>$17,999.36</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>$42.52</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$237.96</td>
<td>$2,275.00</td>
<td>-</td>
<td>$4,499.84</td>
</tr>
<tr>
<td>Cost/Month</td>
<td>$170.08</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$951.84</td>
<td>$9,100.00</td>
<td>-</td>
<td>$17,999.36</td>
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<tr>
<td>Seniors First</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>214.50</td>
<td>27.50</td>
<td>-</td>
<td>-</td>
<td>$15,874.04</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>214.50</td>
<td>-</td>
<td>-</td>
<td>$15,874.04</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$446.27</td>
<td>$1,485.28</td>
<td>-</td>
<td>-</td>
<td>$63,496.16</td>
</tr>
<tr>
<td>Cost/Month</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1,785.06</td>
<td>$5,941.10</td>
<td>-</td>
<td>-</td>
<td>$63,496.16</td>
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<tr>
<td>Tenth Circuit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>55.07</td>
<td>31.56</td>
<td>-</td>
<td>-</td>
<td>$5,485.40</td>
</tr>
<tr>
<td>Hours/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10.60</td>
<td>-</td>
<td>-</td>
<td>$21,941.60</td>
</tr>
<tr>
<td>Cost/Week</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$201.29</td>
<td>$1,704.56</td>
<td>-</td>
<td>-</td>
<td>$21,941.60</td>
</tr>
<tr>
<td>Cost/Month</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$805.18</td>
<td>$6,818.22</td>
<td>-</td>
<td>-</td>
<td>$21,941.60</td>
</tr>
<tr>
<td>Total Monthly Cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$660,120.07</td>
</tr>
<tr>
<td>Per Occupation</td>
<td>$54,292.51</td>
<td>$18,498.73</td>
<td>$23,479.78</td>
<td>$470,267.85</td>
<td>$63,467.69</td>
<td>$12,479.39</td>
<td>$17,634.12</td>
<td>$660,120.07</td>
<td></td>
</tr>
</tbody>
</table>

Note: The labor cost here does not include fringe and benefits. Therefore the estimated costs here are lower-bounds of labor costs of the programs.
Program Administration Time

Across activities, 9 programs recorded an average of 1,844 administrative hours per month (Table 6). The greatest amount of time was spent on ward case management (mean = 65.73 hours per week/262.90 hours per month). Being on call (mean = 59.82 hours per week/239.26 hours per month) was the second most time-demanding task, followed by Clerical Work (mean = 59.66 hours per week/238.65 hours per month), followed by time visiting the ward (mean = 50.54 hours per week/202.17 hours per month), fiscal management of wards' funds (mean = 46 hours per week/184.11 hours per month), preparing filings (mean = 36.18 hours per week/144.72 hours per month), and case file management (mean = 27.80 hours per week/111.21 hours per month).

Table 6. Program Administration Time

<table>
<thead>
<tr>
<th>Task</th>
<th>Mean of Hours (per week)</th>
<th>Mean of Hours (per month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ward Case Management</td>
<td>65.73</td>
<td>262.90</td>
</tr>
<tr>
<td>On Call</td>
<td>59.82</td>
<td>239.26</td>
</tr>
<tr>
<td>Clerical Work</td>
<td>59.66</td>
<td>238.65</td>
</tr>
<tr>
<td>Ward Visit</td>
<td>50.54</td>
<td>202.17</td>
</tr>
<tr>
<td>Ward Fiscal Management</td>
<td>46.03</td>
<td>184.11</td>
</tr>
<tr>
<td>Prepare Filings</td>
<td>36.18</td>
<td>144.72</td>
</tr>
<tr>
<td>Case File Management</td>
<td>27.80</td>
<td>111.21</td>
</tr>
<tr>
<td>Other</td>
<td>23.94</td>
<td>95.75</td>
</tr>
<tr>
<td>Phone Calls</td>
<td>17.45</td>
<td>69.81</td>
</tr>
<tr>
<td>Inventory Management</td>
<td>14.99</td>
<td>59.97</td>
</tr>
<tr>
<td>Email to/from Facility, Exec. Director, etc.</td>
<td>11.94</td>
<td>47.76</td>
</tr>
<tr>
<td>Doctors’ Appointments or Hospital Visits</td>
<td>10.69</td>
<td>42.75</td>
</tr>
<tr>
<td>Travel</td>
<td>6.83</td>
<td>27.32</td>
</tr>
<tr>
<td>Staff Meeting</td>
<td>5.60</td>
<td>22.40</td>
</tr>
<tr>
<td>Hearing or Court Appearance</td>
<td>3.44</td>
<td>13.76</td>
</tr>
<tr>
<td>Public Guardian Office Meeting</td>
<td>3.00</td>
<td>12.00</td>
</tr>
<tr>
<td>Waitlist Procedures</td>
<td>2.88</td>
<td>11.50</td>
</tr>
<tr>
<td>Consult</td>
<td>2.80</td>
<td>11.20</td>
</tr>
<tr>
<td>Telephone Calls</td>
<td>2.25</td>
<td>9.00</td>
</tr>
<tr>
<td>Client Visit</td>
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<td>6.96</td>
</tr>
<tr>
<td>Office Work</td>
<td>1.10</td>
<td>4.40</td>
</tr>
<tr>
<td>Visit with Supervisor</td>
<td>1.00</td>
<td>4.00</td>
</tr>
<tr>
<td>Ward Report</td>
<td>1.00</td>
<td>4.00</td>
</tr>
<tr>
<td>Call to/from Facility, Exec. Director, Nurse, etc.</td>
<td>0.90</td>
<td>3.60</td>
</tr>
<tr>
<td>Annual Plan/Annual Inventory</td>
<td>0.69</td>
<td>2.76</td>
</tr>
<tr>
<td>Memory Unit Tour</td>
<td>0.58</td>
<td>2.32</td>
</tr>
<tr>
<td>Receipt and Review of Mail</td>
<td>0.50</td>
<td>2.00</td>
</tr>
<tr>
<td>Review of Ward Management System</td>
<td>0.50</td>
<td>2.00</td>
</tr>
<tr>
<td>Record data</td>
<td>0.40</td>
<td>1.60</td>
</tr>
<tr>
<td>Care Plan Review</td>
<td>0.40</td>
<td>1.60</td>
</tr>
<tr>
<td>Shredding Obsolete Documents</td>
<td>0.33</td>
<td>1.32</td>
</tr>
<tr>
<td>Birth Certificate Application</td>
<td>0.30</td>
<td>1.20</td>
</tr>
</tbody>
</table>

Note: The nine programs are Barry University, Charlotte-Collier, Dade, Guardianship Care Group, Indian River County, Legal Aid Society of PB, Osceola COA, Seniors First, and Tenth Circuit.
Table 7 indicates the ratio of public guardian staff to ward. When including all FTE staff members in the ratio, two programs exceed the 1:40 ratio of ward to public guardian staff exceed the ratio. Permission is granted at the request of the public guardian offices. Programs have requested increases due to supplemental funding, such as county agreements for waiting list limitations. Other programs have requested that the ward ratio be exceeded to meet the growing needs in the circuit, despite the program maintaining a waiting list. It is not the preference of the Office of Public and Professional Guardians that the public guardian programs maintain caseloads exceeding the 1 to 40 ratio.

Table 7. Staff to Ward Ratio

<table>
<thead>
<tr>
<th>Programs</th>
<th>Wards</th>
<th># FTE (Any)</th>
<th># Staff (Any): Ward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>329</td>
<td>21.5</td>
<td>1:15.3</td>
</tr>
<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>274</td>
<td>8</td>
<td>1:34.3</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>198</td>
<td>4</td>
<td>1:49.5</td>
</tr>
<tr>
<td>Council on Aging of Volusia County</td>
<td>68</td>
<td>5</td>
<td>1:13.6</td>
</tr>
<tr>
<td>Eighth Circuit Public Guardian</td>
<td>64</td>
<td>3</td>
<td>1:26.6</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>141</td>
<td>7.5</td>
<td>1:18.8</td>
</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>1,598</td>
<td>55</td>
<td>1:45</td>
</tr>
<tr>
<td>The Guardianship Care Group, Inc.</td>
<td>81</td>
<td>4.5</td>
<td>1:18</td>
</tr>
<tr>
<td>Lee County Public Guardianship Program</td>
<td>179</td>
<td>5.5</td>
<td>1:32.5</td>
</tr>
<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>151</td>
<td>9</td>
<td>1:16.8</td>
</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>14</td>
<td>4</td>
<td>1:3.5</td>
</tr>
<tr>
<td>North Florida Office of the Public Guardian, Inc.</td>
<td>387</td>
<td>12.5</td>
<td>1:31</td>
</tr>
<tr>
<td>Osceola Council on Aging</td>
<td>30</td>
<td>2</td>
<td>1:15</td>
</tr>
<tr>
<td>Seniors First, Inc.</td>
<td>111</td>
<td>6</td>
<td>1:18.5</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>52</td>
<td>5</td>
<td>1:10.4</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>104</td>
<td>12</td>
<td>1:8.7</td>
</tr>
<tr>
<td>Tenth Circuit Public Guardian</td>
<td>65</td>
<td>3.5</td>
<td>1:18.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,846</td>
<td>168</td>
<td></td>
</tr>
</tbody>
</table>

Operating Programs Budget and Estimated Actual Costs

From July 1, 2017 to June 30, 2018, the public guardian programs reported an OPPG state allotment $5,842,313 to operate the 17 programs (Table 8a), which is 98.57% of the total program operating budget. The average yearly state contribution per program was $343,665.50. The average monthly budget per program was $66,692.10 and the average actual yearly budget of serving a ward in the sample is $5,084.72 (Table 8b). The average yearly budget of serving a ward in Florida was $2,625.38 in 2018, $2,648 in 2008, and $2,857 in 1983 (Schmidt, Miller, Peters, & Lowenstein, 1988). For the state of Virginia, the average yearly cost per ward was $2,955 in 2002 (Teaster & Roberto, 2003). It should be noted that the low cost to operate a public program are likely the result of the too-high, 1:40 ward to staff ratio in Florida.

Some programs are serving at a ratio lower than 1:40 ratio. This is likely due to limited state allocation and supplemental funding. While the program has the capacity, written in Florida Statute, to serve up to 40 wards per full-time staff person, limited state resources and unstable non-recurring funding have not allowed programs to remove additional persons off their waiting lists.
<table>
<thead>
<tr>
<th>Program</th>
<th>OPPG State Funding</th>
<th>County Funding</th>
<th>SSA Rep Payee</th>
<th>Other Recurring and Non-Recurring</th>
<th>Donated/Contracted Services</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>$813,231.34</td>
<td>$0</td>
<td>$0</td>
<td>$124,172.29</td>
<td>$1,535,000.00</td>
<td>$2,472,403.63</td>
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<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>$628,580.00</td>
<td>$0</td>
<td>$14,305.00</td>
<td>$38,809.81</td>
<td>$16,206.40</td>
<td>$697,901.21</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>$206,337.00</td>
<td>$384,000.00</td>
<td>$0</td>
<td>$0</td>
<td>$75,000.00</td>
<td>$665,337.00</td>
</tr>
<tr>
<td>Council on Aging of Volusia County</td>
<td>$87,430.78</td>
<td>$126,000.00</td>
<td>$6,932.00</td>
<td>$92,343.27</td>
<td>$53,618.00</td>
<td>$366,324.05</td>
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<tr>
<td>Eighth Circuit Public Guardian</td>
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<td>$0</td>
<td>$0</td>
<td>$20,000.00</td>
<td>$207,238.00</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>$334,661.67</td>
<td>$0</td>
<td>$3,902.00</td>
<td>$35,600.00</td>
<td>$137,400.00</td>
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</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>$1,245,776.00</td>
<td>$2,428,000.00</td>
<td>$0</td>
<td>$10,933.29</td>
<td>$0</td>
<td>$4,084,719.29</td>
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<tr>
<td>The Guardianship Care Group, Inc.</td>
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<td>$0</td>
<td>$0</td>
<td>$92,102.00</td>
<td>$288,477.00</td>
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<tr>
<td>Lee County Public Guardianship Program</td>
<td>$189,631.33</td>
<td>$233,511.00</td>
<td>$0</td>
<td>$0</td>
<td>$60,000.00</td>
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<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>$270,878.00</td>
<td>$246,775.00</td>
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<td>$152,982.00</td>
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</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>$36,226.00</td>
<td>$0</td>
<td>$0</td>
<td>$30,000.00</td>
<td>$98,437.10</td>
<td>$164,663.10</td>
</tr>
<tr>
<td>North Florida Office of the Public Guardian, Inc.</td>
<td>$800,134.56</td>
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<td>$0</td>
<td>$100,073.00</td>
<td>$18,235.00</td>
<td>$918,442.56</td>
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<tr>
<td>Osceola Council on Aging</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$360,000.00</td>
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<tr>
<td>Senior Friends, Inc.</td>
<td>$172,601.11</td>
<td>$95,418.00</td>
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<td>$42,700.00</td>
<td>$48,000.00</td>
<td>$358,719.11</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>$137,989.44</td>
<td>$0</td>
<td>$15,190.00</td>
<td>$4,214.00</td>
<td>$10,378.00</td>
<td>$137,719.11</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>$260,229.34</td>
<td>$46,000.00</td>
<td>$21,416.30</td>
<td>$74,350.41</td>
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<tr>
<td>Tenth Circuit Public Guardian</td>
<td>$172,902.89</td>
<td>$0</td>
<td>$0</td>
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<td>$62,770.00</td>
<td>$235,672.89</td>
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<td>Yearly Totals</td>
<td>$5,842,313.57</td>
<td>$3,559,704.00</td>
<td>$461,755.30</td>
<td>$553,196.07</td>
<td>$3,218,271.19</td>
<td>$13,605,458.13</td>
</tr>
<tr>
<td>Yearly Operating Budget Per Program</td>
<td>$343,665.50</td>
<td>$209,394.35</td>
<td>$3,632.08</td>
<td>$32,540.95</td>
<td>$189,310.07</td>
<td>$800,305.16</td>
</tr>
</tbody>
</table>
Table 8b. Program Operating Budget (Labor Budget, Nonlabor Budget) by Program

<table>
<thead>
<tr>
<th>Program</th>
<th># Wards (1)</th>
<th>Yearly Budget by Program from All Funding Sources (2)</th>
<th>Monthly Budget by Program (3) = (2)/12</th>
<th>Monthly Budget per Client by Program (4) = (3)/(1)</th>
<th>Yearly Budget per Client by Program (5) = (4)*12</th>
<th>Total Yearly Labor Budget (6) = x% * Total yearly recurring funding in Table 8a</th>
<th>Total Yearly Non-labor Budget (7) = (2) - (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>329</td>
<td>$2,472,404</td>
<td>$206,033.64</td>
<td>$626.24</td>
<td>$7,514.90</td>
<td>$755,329.27</td>
<td>$1,717,074.36</td>
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<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>274</td>
<td>$897,901</td>
<td>$58,158.43</td>
<td>$212.26</td>
<td>$2,547.08</td>
<td>$520,736.85</td>
<td>$177,164.36</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>198</td>
<td>$665,337.00</td>
<td>$55,444.75</td>
<td>$280.02</td>
<td>$3,360.29</td>
<td>$383,719.05</td>
<td>$281,617.95</td>
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<tr>
<td>Council on Aging of Volusia County</td>
<td>68</td>
<td>$366,324.05</td>
<td>$30,527.00</td>
<td>$448.93</td>
<td>$5,387.12</td>
<td>$210,256.05</td>
<td>$156,068.00</td>
</tr>
<tr>
<td>Eighth Circuit Public Guardian</td>
<td>64</td>
<td>$207,238.00</td>
<td>$17,269.83</td>
<td>$269.84</td>
<td>$3,238.09</td>
<td>$161,024.68</td>
<td>$46,213.32</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>141</td>
<td>$511,563.67</td>
<td>$42,630.31</td>
<td>$302.34</td>
<td>$3,628.11</td>
<td>$287,779.12</td>
<td>$223,784.55</td>
</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>1598</td>
<td>$4,084,719.29</td>
<td>$340,393.27</td>
<td>$213.01</td>
<td>$2,556.14</td>
<td>$3,340,504.52</td>
<td>$744,214.77</td>
</tr>
<tr>
<td>The Guardianship Care Group, Inc.</td>
<td>81</td>
<td>$288,477.00</td>
<td>$24,039.75</td>
<td>$296.79</td>
<td>$3,561.44</td>
<td>$137,462.50</td>
<td>$151,014.50</td>
</tr>
<tr>
<td>Lee County Public Guardianship Program</td>
<td>179</td>
<td>$483,142.33</td>
<td>$40,261.86</td>
<td>$224.93</td>
<td>$2,699.12</td>
<td>$405,370.35</td>
<td>$77,771.98</td>
</tr>
<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>151</td>
<td>$670,635.00</td>
<td>$55,886.25</td>
<td>$370.11</td>
<td>$4,441.29</td>
<td>$450,358.11</td>
<td>$220,276.89</td>
</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>14</td>
<td>$164,663.10</td>
<td>$13,721.93</td>
<td>$980.14</td>
<td>$11,761.65</td>
<td>$6,680.07</td>
<td>$157,983.03</td>
</tr>
<tr>
<td>North Florida Office of the Public Guardian, Inc.</td>
<td>387</td>
<td>$918,442.56</td>
<td>$76,536.88</td>
<td>$197.77</td>
<td>$2,373.24</td>
<td>$613,226.57</td>
<td>$305,215.99</td>
</tr>
<tr>
<td>Osceola Council on Aging</td>
<td>30</td>
<td>$462,091.11</td>
<td>$38,507.59</td>
<td>$1,283.59</td>
<td>$15,403.04</td>
<td>$82,693.80</td>
<td>$379,397.31</td>
</tr>
<tr>
<td>Seniors First, Inc.</td>
<td>111</td>
<td>$358,719.11</td>
<td>$29,893.26</td>
<td>$269.31</td>
<td>$3,231.70</td>
<td>$226,289.33</td>
<td>$132,429.78</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>52</td>
<td>$137,719.11</td>
<td>$11,476.59</td>
<td>$220.70</td>
<td>$2,648.44</td>
<td>$101,098.43</td>
<td>$36,891.01</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>104</td>
<td>$880,138.74</td>
<td>$73,344.90</td>
<td>$705.24</td>
<td>$8,462.87</td>
<td>$176,928.65</td>
<td>$703,210.09</td>
</tr>
<tr>
<td>Tenth Circuit Public Guardian</td>
<td>65</td>
<td>$235,672.89</td>
<td>$19,639.41</td>
<td>$302.14</td>
<td>$3,625.74</td>
<td>$122,761.05</td>
<td>$112,911.84</td>
</tr>
<tr>
<td>Average Over All Programs</td>
<td>226.24</td>
<td>$800,305.16</td>
<td>$66,692.10</td>
<td>$423.73</td>
<td>$5,084.72</td>
<td>$469,542.26</td>
<td>$330,778.81</td>
</tr>
</tbody>
</table>

The percentage of total yearly labor budget of the public guardian programs was collected in March 2019 survey by OPPG.

Table 8c reflects the unmet funding needs of each program by using the time study information provided by nine of the programs. The estimation of unmet programmatic funding needs was calculated by subtracting the total yearly recurring funding by program (Column 6) from the total estimate yearly cost needs for operation (Column 5). Added with the state funding figure in Table 8a, Column 1, which is $5,842,313.57 and the total unmet need of $8,885,717.74 (Table 8c, 7), the resulting figure is a budget shortfall of $14,728,031.31.
Table 8c. Estimated Unmet Program Cost Needs Based on Total Recurring Funding and Estimated Labor Costs

<table>
<thead>
<tr>
<th>Program</th>
<th># Wards (1)</th>
<th>Total Yearly Labor Budget (2)</th>
<th>Total Yearly Non-labor Budget (3)</th>
<th>Total Yearly Estimated Labor Cost (4)</th>
<th>Total Estimated Yearly Operation Cost Needs (5) = (3) + (4)</th>
<th>Total Yearly Recurring Funding (6)</th>
<th>Total Estimated Unmet Program Cost Needs (7) = (5) - (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>329</td>
<td>$755,329.27</td>
<td>$1,717,074.36</td>
<td>$999,023.89*</td>
<td>$2,716,098.25</td>
<td>$813,231.34</td>
<td>$1,902,866.91</td>
</tr>
<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>274</td>
<td>$520,736.85</td>
<td>$1,777,164.36</td>
<td>$918,480.60</td>
<td>$1,095,644.96</td>
<td>$642,885.00</td>
<td>$452,759.96</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>198</td>
<td>$383,719.05</td>
<td>$281,617.95</td>
<td>$531,185.52</td>
<td>$812,803.47</td>
<td>$590,337.00</td>
<td>$222,466.47</td>
</tr>
<tr>
<td>Council on Aging of Volusia County</td>
<td>68</td>
<td>$210,256.05</td>
<td>$156,068.00</td>
<td>$363,007.76*</td>
<td>$519,075.76</td>
<td>$220,362.78</td>
<td>$298,712.98</td>
</tr>
<tr>
<td>Eighth Circuit Public Guardian</td>
<td>64</td>
<td>$161,024.68</td>
<td>$46,213.32</td>
<td>$335,260.39*</td>
<td>$399,473.71</td>
<td>$187,238.00</td>
<td>$212,235.71</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>141</td>
<td>$287,779.12</td>
<td>$223,784.55</td>
<td>$540,897.33*</td>
<td>$764,681.88</td>
<td>$338,563.67</td>
<td>$426,118.21</td>
</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>1598</td>
<td>$3,340,504.52</td>
<td>$744,214.77</td>
<td>$4,078,674.00</td>
<td>$4,822,888.77</td>
<td>$3,673,776.00</td>
<td>$1,149,112.77</td>
</tr>
<tr>
<td>The Guardianship Care Group, Inc.</td>
<td>81</td>
<td>$137,462.50</td>
<td>$151,014.50</td>
<td>$329,645.04</td>
<td>$480,659.54</td>
<td>$196,375.00</td>
<td>$284,284.54</td>
</tr>
<tr>
<td>Lee County Public Guardianship Program</td>
<td>179</td>
<td>$405,370.35</td>
<td>$77,771.98</td>
<td>$633,497.38*</td>
<td>$711,269.36</td>
<td>$423,142.33</td>
<td>$288,127.03</td>
</tr>
<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>151</td>
<td>$450,358.11</td>
<td>$220,276.89</td>
<td>$674,533.32</td>
<td>$894,810.21</td>
<td>$517,653.00</td>
<td>$377,157.21</td>
</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>14</td>
<td>$6,680.07</td>
<td>$157,983.03</td>
<td>$147,677.04</td>
<td>$305,660.07</td>
<td>$36,226.00</td>
<td>$269,434.07</td>
</tr>
<tr>
<td>North Florida Office of the Public Guardian, Inc.</td>
<td>387</td>
<td>$613,226.57</td>
<td>$305,215.99</td>
<td>$1,140,360.80*</td>
<td>$1,445,576.79</td>
<td>$800,134.56</td>
<td>$645,442.23</td>
</tr>
<tr>
<td>Osceola Council on Aging</td>
<td>30</td>
<td>$82,693.80</td>
<td>$379,597.31</td>
<td>$215,992.32</td>
<td>$595,389.63</td>
<td>$102,091.11</td>
<td>$493,298.52</td>
</tr>
<tr>
<td>Seniors First, Inc.</td>
<td>111</td>
<td>$226,289.33</td>
<td>$132,429.78</td>
<td>$761,953.92</td>
<td>$894,383.70</td>
<td>$268,019.11</td>
<td>$626,364.59</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>52</td>
<td>$101,098.43</td>
<td>$36,891.01</td>
<td>$324,018.26*</td>
<td>$360,909.27</td>
<td>$153,179.44</td>
<td>$207,729.83</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>104</td>
<td>$176,928.65</td>
<td>$703,210.09</td>
<td>$450,734.12*</td>
<td>$1,153,944.21</td>
<td>$327,645.64</td>
<td>$826,298.57</td>
</tr>
<tr>
<td>Tenth Circuit Public Guardian</td>
<td>65</td>
<td>$122,761.05</td>
<td>$112,911.84</td>
<td>$263,299.20</td>
<td>$376,211.04</td>
<td>$172,902.89</td>
<td>$203,308.15</td>
</tr>
<tr>
<td><strong>Average Over All Programs</strong></td>
<td>226.2353</td>
<td><strong>$469,542.26</strong></td>
<td><strong>$330,778.81</strong></td>
<td><strong>$748,602.40</strong></td>
<td><strong>$1,079,381.21</strong></td>
<td><strong>$556,691.93</strong></td>
<td><strong>$552,689.28</strong></td>
</tr>
</tbody>
</table>

Total Unmet Cost Needs: $8,885,717.74

Notes: Estimated labor costs were predicted from regression models using the available time study information from nine of the programs.

Table 8d shows total labor costs for the programs should a 1:20 ratio of full-time staff for wards be implemented across the programs. Under this scenario, the total yearly labor cost per program is calculated by multiplying the labor cost per ward (Column 5) by the number of wards applied to a 1:20 ratio. The total yearly labor costs per program range from a low of $283,553.20 (Tenth Circuit Public Guardian), serving 70 wards, to a high of $2,807,596.00 (Guardianship Program of Dade County), serving 1,100 wards. The average programmatic cost per year when programs maintain a 1:20 ratio is $735,496.68.
Table 8d. Total Labor Costs Under a 1:20 Staff-Ward Ratio Scenario

<table>
<thead>
<tr>
<th>Programs</th>
<th>Actual # of Wards</th>
<th>Actual # FTE (Any)</th>
<th># Staff (Any) Ward</th>
<th>Total Yearly Estimated Labor Cost</th>
<th>Labor Cost per Ward</th>
<th># of Wards for 1:20 Ratio</th>
<th>Total Yearly Estimated Labor Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aging Solutions, Inc.</td>
<td>329</td>
<td>21.5</td>
<td>01:15.0</td>
<td>$999,023.89</td>
<td>$3,056.55</td>
<td>430</td>
<td>$1,305,716.50</td>
</tr>
<tr>
<td>Barry University, Office of the Public Guardian</td>
<td>274</td>
<td>8</td>
<td>01:34.3</td>
<td>$918,480.60</td>
<td>$3,352.12</td>
<td>160</td>
<td>$536,339.20</td>
</tr>
<tr>
<td>Charlotte &amp; Collier County Public Guardian</td>
<td>198</td>
<td>4</td>
<td>01:49.5</td>
<td>$531,185.52</td>
<td>$2,682.76</td>
<td>80</td>
<td>$214,620.80</td>
</tr>
<tr>
<td>Council on Aging of Volusia County</td>
<td>68</td>
<td>5</td>
<td>01:13.6</td>
<td>$363,007.76</td>
<td>$5,338.35</td>
<td>100</td>
<td>$533,835.00</td>
</tr>
<tr>
<td>Eighth Circuit Public Guardian</td>
<td>64</td>
<td>3</td>
<td>01:26.6</td>
<td>$353,260.39</td>
<td>$5,519.69</td>
<td>60</td>
<td>$331,181.40</td>
</tr>
<tr>
<td>Fifth Circuit Public Guardian Corporation</td>
<td>141</td>
<td>7.5</td>
<td>01:18.8</td>
<td>$540,897.33</td>
<td>$3,826.15</td>
<td>150</td>
<td>$575,422.50</td>
</tr>
<tr>
<td>Guardianship Program of Dade County</td>
<td>1,598</td>
<td>55</td>
<td>1:45</td>
<td>$4,078,674.00</td>
<td>$2,552.35</td>
<td>1100</td>
<td>$2,807,596.00</td>
</tr>
<tr>
<td>The Guardianship Care Group, Inc.</td>
<td>81</td>
<td>4.5</td>
<td>1:18</td>
<td>$329,645.04</td>
<td>$4,069.69</td>
<td>90</td>
<td>$366,272.10</td>
</tr>
<tr>
<td>Lee County Public Guardianship Program</td>
<td>179</td>
<td>5.5</td>
<td>01:32.5</td>
<td>$633,497.38</td>
<td>$3,539.09</td>
<td>110</td>
<td>$389,299.90</td>
</tr>
<tr>
<td>Legal Aid Society of Palm Beach County, Inc.</td>
<td>151</td>
<td>9</td>
<td>01:16.8</td>
<td>$574,533.32</td>
<td>$4,467.11</td>
<td>180</td>
<td>$804,079.80</td>
</tr>
<tr>
<td>Public Guardian Program of Indian River County, Inc.</td>
<td>14</td>
<td>4</td>
<td>01:03.5</td>
<td>$147,677.04</td>
<td>$10,548.36</td>
<td>80</td>
<td>$843,868.80</td>
</tr>
<tr>
<td>North Florida Office of the Public Guardian, Inc.</td>
<td>387</td>
<td>12.5</td>
<td>1:31</td>
<td>$1,140,360.80</td>
<td>$2,946.67</td>
<td>250</td>
<td>$736,667.50</td>
</tr>
<tr>
<td>Osceola Council on Aging</td>
<td>30</td>
<td>2</td>
<td>1:15</td>
<td>$215,992.32</td>
<td>$7,199.74</td>
<td>40</td>
<td>$287,989.60</td>
</tr>
<tr>
<td>Seniors First, Inc.</td>
<td>111</td>
<td>6</td>
<td>01:18.5</td>
<td>$761,953.92</td>
<td>$6,864.45</td>
<td>120</td>
<td>$823,734.00</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Pensacola)</td>
<td>52</td>
<td>5</td>
<td>01:10.4</td>
<td>$324,018.26</td>
<td>$6,231.12</td>
<td>100</td>
<td>$623,112.00</td>
</tr>
<tr>
<td>Lutheran Services of Florida, Inc. (Sarasota)</td>
<td>104</td>
<td>12</td>
<td>01:08.7</td>
<td>$450,734.12</td>
<td>$4,333.98</td>
<td>240</td>
<td>$1,040,135.20</td>
</tr>
<tr>
<td>Tenth Circuit Public Guardian</td>
<td>65</td>
<td>3.5</td>
<td>01:18.6</td>
<td>$263,299.20</td>
<td>$4,050.76</td>
<td>70</td>
<td>$283,553.20</td>
</tr>
<tr>
<td>Average</td>
<td>226.24</td>
<td>9.88</td>
<td>01:22.9</td>
<td>$748,602.41</td>
<td>$4,739.35</td>
<td>197.65</td>
<td>$735,496.68</td>
</tr>
</tbody>
</table>

Note: The labor cost per ward (Column 5) is assumed to be a constant value for each program.
Tangible Cost Savings

Programs report conducting numerous actions and activities for wards that resulted in substantial cost savings (Table 9). Facilitating the discharge of wards from medical hospitals to nursing homes resulted in the greatest cost savings ($12,293,316.00). Other cost saving measures include foster transition for youths, followed by discharge from a state hospital to an assisted living facility or a nursing home, discharge from a medical hospital to a nursing home, and securing community-based services for wards. In addition to these cost saving activities, the state makes arrangements for pre-paid funerals. Cost savings for pre-paid funerals was not included in the report. However, for each 100 pre-paid funeral arranged in a year’s time, the state could realize $600,000 in savings.

Table 9. Cost Savings Activities Conducted by the Guardianship Programs

<table>
<thead>
<tr>
<th>Action/Activity</th>
<th>Programs</th>
<th>WARDs</th>
<th>Projected Actions for one Year</th>
<th>Estimated Cost Savings for 1 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharge from state hospital to assisted living facility</td>
<td>7</td>
<td>11</td>
<td>132</td>
<td>$760,834.80</td>
</tr>
<tr>
<td>Discharge from state hospital to nursing home</td>
<td>4</td>
<td>8</td>
<td>96</td>
<td>$112,694.40</td>
</tr>
<tr>
<td>Discharge from medical hospital to nursing home</td>
<td>17</td>
<td>147</td>
<td>1764</td>
<td>$12,293,316.00</td>
</tr>
<tr>
<td>Discharge from medical hospital to assisted living facility</td>
<td>12</td>
<td>70</td>
<td>840</td>
<td>$6,239,520.00</td>
</tr>
<tr>
<td>Secure comm.-based service (to prevent moving to more restrictive environ)</td>
<td>11</td>
<td>79</td>
<td>948</td>
<td>$110,916.00</td>
</tr>
<tr>
<td>Multiple Baker Acts prior to placement in programs</td>
<td>16</td>
<td>78</td>
<td>936</td>
<td>$118,357.20</td>
</tr>
<tr>
<td>Multiple arrests or APS referral</td>
<td>14</td>
<td>48</td>
<td>576</td>
<td>$439,539.84</td>
</tr>
<tr>
<td>Foster transition youth</td>
<td>10</td>
<td>40</td>
<td>480</td>
<td>$8,964,808.00</td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
<td></td>
<td></td>
<td>$29,039,986.24</td>
</tr>
</tbody>
</table>

Notes:

- The number of wards per program is found in Table 1.
- All funding resources are found in the last column of Table 8a.
- Monthly cost per program is calculated as: All Funding Sources/12.
- Monthly cost per ward is calculated as: Monthly Cost per Program/# wards.
- Yearly cost per ward is calculated as: Monthly cost per ward x 12.
- Information on the calculation of cost-savings is found in Appendix A.

Overall Cost Savings

Overall, during the period June 1, 2018 to December 31, 2018, the programs’ estimated total cost savings to the state of Florida was $23,197,672.67 (Table 10). Table 11 shows that funding the programs to meet the needs of providing services currently met through unstable or non-recurring funding would still result in a tangible cost savings to the state of $14,311,954.93.
Table 10. Overall Cost Savings

<table>
<thead>
<tr>
<th>Year</th>
<th>Total State Funding</th>
<th>Program Cost Savings</th>
<th>Cost Savings to the State&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$5,842,313.57</td>
<td>$29,039,986.24</td>
<td>$23,197,672.67</td>
</tr>
</tbody>
</table>

<sup>a</sup> Represents reported cost savings minus total state funding.

Table 11. Cost Savings with Adequate State Funding

<table>
<thead>
<tr>
<th>Year</th>
<th>Actual Program Shortfall</th>
<th>Program Cost Savings</th>
<th>Cost Savings to the State&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$14,728,031.31</td>
<td>$29,039,986.24</td>
<td>$14,311,954.93</td>
</tr>
</tbody>
</table>

<sup>b</sup> Represents reported costs savings minus actual operating budget.

CHARACTERISTICS OF THE WARDS

This portion of the report provides information about the wards served by the OPPG programs as of June 30, 2018. Information is provided about the demographic characteristics of the wards as well as their health and functional abilities.

Demographic Characteristics

Figures 2 through 4 provide specific details about demographic characteristics of the wards. The distribution of the types of guardianship provided for the wards is shown in Figure 2. The majority of guardianships constitutes plenary guardianships (77.20%), followed by limited guardianships (11.40%), and guardian advocates (5.01%).

Figure 2. Type of Guardianship Provided for the Wards (n=2,754)

The distribution of the sex of the wards is similar to that seen in the 2010 Florida census data, consisting of slightly less than half females (47.89%) and slightly more than half males (52.11%) (Figure 3).
The wards have an average age of 65.43 years. The ward population is a significantly older one, with 76.28% of the wards being 55 years of age and older as compared to 29.77% who are 55 years of age and older in the general population of Florida (Figure 4).

**Nature of Incapacity**
Across the 17 programs (Table 12), 42.70% of wards had a developmental disability, 43.21% had a problem with mental illness, and 39.56% had a neuro-cognitive disability. For 44.67% of the wards, these conditions and others constituted multiple diagnoses.
Table 12. Ward Counts Across All 17 Programs by Nature of Incapacity¹,²

<table>
<thead>
<tr>
<th>Nature of Incapacity</th>
<th>Number of Wards with the Incapacity</th>
<th>Percentage of Wards with the Incapacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developmental Disability</td>
<td>761</td>
<td>42.70%</td>
</tr>
<tr>
<td>Mental Illness</td>
<td>770</td>
<td>43.21%</td>
</tr>
<tr>
<td>Nero-Cognitive Disability</td>
<td>705</td>
<td>39.56%</td>
</tr>
<tr>
<td>Traumatic Brain Injury</td>
<td>181</td>
<td>10.16%</td>
</tr>
<tr>
<td>Multiple Diagnosis</td>
<td>796</td>
<td>44.67%</td>
</tr>
</tbody>
</table>

¹Table 11 denotes number of wards with different types of incapacity, in all 17 of the guardianship programs of Florida.
²A ward may suffer from more than one incapacity; therefore, the total ward count across incapacity is greater than the total number of wards (n=1,782) and percentage of wards by incapacity is summed to be greater than 100%.

Wards most commonly reside in facilities providing an increased level of supervision and assistance with activities of daily living, such as nursing facilities (42.00%), assisted living facilities (22.99%), or group homes (15.40%) with a very small percentage (4.04%) of the population living in a private residence (4.30%) or independent living (1.04%) (Figure 5). Only 6.31% of the wards live in hospitals, and 6.89% of the ward population lives in other types of residences such an intermediate care facility, rehabilitation center, state institution, or adult family home.

Figure 5. Type of Residence of the Wards (n=2,993)

Key Points: Program Administration

- Seventeen public guardian programs are contracted to serve 3,846 wards, with each program serving between 14 and 1,598 wards.
- The average yearly state contribution is $5,842,313.57 and contribution per program is $343,665.50.
- As of June 20, 2018, programs had 153 full-time staff and 30 part-time staff.
- The majority of programs’ monthly administrative time is spent on ward case management (mean = 65.73 hours per week/262.90 hours per month), followed by on-call hours and case file management/ward visits.
- The average yearly cost of serving a ward is $5,084.72.
- Estimated total cost savings of the programs is $29,039,986.24.
- The overall cost savings to the state of Florida (cost savings minus total state funding) is $23,197,672.67.
Key Points: Ward Characteristics

- Slightly less than half of wards are women (48.88%), with an average age of 65.43 years.
- The majority of wards lives in skilled nursing facilities (42%) and assisted living facilities (22.99%) as the most common type of living arrangements.
- More than one-third (42.7%) of wards have diagnosed developmental disabilities leading to incapacity, mental illness (43.2%), and neuro-cognitive disabilities (39.56%).

Public Guardian Success Stories

The Florida public guardians’ activities result in tangible cost savings every year. In addition to tangible cost savings activities, Florida public guardians positively impact the lives of the wards served, including social, financial, medical, and emotional aspects of life.

The Fifth Circuit Public Guardian served a ward named “Becky.” Becky was living in her own home under hospice. While visiting her, hospice staff noticed that her husband seemed to be having a hard time assisting with her care. Hospice requested the assistance of the program as Emergency Temporary Guardian to see if Becky and her husband could have more help. The program staff was able to assist and resolve problems that Becky and her husband were having with some providers and the Department of Children and Families. The program worked with Becky’s home health provider to have services in her home 7 days a week. In the end, the court was satisfied that Becky’s husband could act as her primary caregiver with services in the house daily. Thanks to the help of the Fifth Circuit Public Guardian program serving as Becky’s Emergency Temporary Guardian, Becky is now able to remain in her home without further need for a permanent guardian.

The North Florida Office of Public Guardian, Inc. served an elderly disabled adult who was in need of cataract surgery. Prior to the public guardian’s appointment, the ward was living in a group home that was not meeting the ward’s needs, not providing the necessary food and nutrition, and the public guardian staff worked tirelessly with the provider to ensure that the safety of all of the residents in the group home were being met; however, due to malnutrition, the elderly ward was not able to receive the much needed cataract surgery, a surgery which would positively impact the ward’s life and independence. With the public guardian staff’s hard work, the program was able to find the ward a new group home placement that the ward adores, and with proper nutrition, the ward finally received the cataract surgery that he needed. The public guardian staff noted that the ward has a greatly improved quality of life and really enjoys his new home.

A ward from the Lutheran Services of Florida, Inc. (Sarasota) office, “E.,” suffered serious injury in an automobile accident which lead to a debilitating stroke. “E.” was in and out of the hospital when the program first was involved. The ward had no primary care physician and no health insurance. All of the ward’s bills were far past due and her finances were in disarray. Thanks to the hard work of the public guardian program staff, “E.” is now in a stable environment and receives all the medications she needs. The ward sees her new primary care doctor frequently, and the program has noted a significant decrease in hospital stays. “E.” is now eligible for supportive home and community-based services which have enabled her to live at home with her family.

Recommendations

Based on the information above, the research team makes the following recommendations.

- Increased fiscal support by the State of Florida is critical to the success of the programs. The programs should not have to depend upon volunteers, donated services, or their own fundraising.
- Some programs have no persons on their waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs’ ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Ways to circumvent the ratio are ways to decrease the
quality of services to the wards of the public guardian. It is critical to maintain the 1:40 ratio in all jurisdictions, regardless of incentive.

- Thoroughly document tangible and intangible cost savings by all programs. The programs produce substantial cost savings to the state—more than 3 1/2 times the amount allocated—or $29,039,986.24 for one year. If the programs were provided with stable, recurring funding, they would still produce a cost savings to the state of $14,311,954.93.

- Programs should provide standardized administrative information (e.g., the administrative profile) at least annually, especially information regarding quality of life improvement and cost savings. Programs should document all cost savings activities as accurately as possible.

- Programs’ lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns and pro bono attorneys to meet the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.

- The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.

- Inconsistency in guardianship case management in the courts has been noted by programs, who report that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program’s budget. This practice should be stopped.

- Some circuits require that a program’s Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility. This practice, which overlooks an important feature of public guardianship, should end. The agency, not an individual, should be the named public guardian on orders.
References


Appendix A: Cost Savings Calculation Explanation

Note: (→) indicate the inflation-adjusted values, according to CPI inflation rate.3

1. Nursing home (NH) day = (2018) $268. 4
2. Assisted living facility (ALF) day = (2018) $115. 5
5. Pre-paid Funeral = (2017) $7,360 → (2018) $7,540. 8
8. Cost saving of “Multiple Arrest or APS” = $763.09. 11

<table>
<thead>
<tr>
<th>Action</th>
<th>Calculation</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>From SH to ALF</td>
<td>(SH) $307.13/day - (ALF) $115/day = $192.13x 30 days</td>
<td>$5,763.9</td>
</tr>
<tr>
<td>From SH to NH</td>
<td>(SH) $307.13/day - (NH) $268/day = $39.13 x 30 days</td>
<td>$1,173.9</td>
</tr>
<tr>
<td>From AH to ALF</td>
<td>(AH) $2,591.4/day - (ALF) $115/day = $1728 x 3 days</td>
<td>$7,428</td>
</tr>
<tr>
<td>From AH to NH</td>
<td>(AH) $2,591.4/day - (SH) $268/day = $1626 x 3 days</td>
<td>$6,969</td>
</tr>
</tbody>
</table>

Assumptions:

a. Patient would have stayed in state hospital for 30 days if not otherwise moved.
b. Patient would have stayed in acute hospital for 3 days if not otherwise moved.
c. For cost savings related to the Baker Act, we considered an inflation-adjusted average of the actual costs by representing the cost of mental health treatments reimbursed by Medicaid. Assuming that placement in programs lowers the cost of mental treatment under the Baker Act to zero, the cost savings of the program can be estimated as the average cost of mental health treatment. Thus, the value calculated for the cost savings per ward is $126.45.
d. Based on the APS cost savings that was calculated from data provided by Florida APS, the cost per unit was equal to $763.09.

3 The following online inflation calculator is implemented in order to adjust values according to CPI:
https://www.usinflationcalculator.com/
5 ibid.
6 https://hcupnet.ahrq.gov/#query/eyJBTkFMWVNVJU19UWVBFjpbIkFUXiXiX8wiWUVBUUMiOl5iWVJfMjAxNSJdLCJDQVRFR09SSVpBVElPTJ9UWVFjpbIkNUx0fMTCjLJCRVUiIDSRBOxX1jRZU1U6iOlsiUVRUX09BIl0sIiKRBYEFTRVRU09VUNGpBjIpRX05JUv6dQ==
7 https://www.google.com/url?q=http://www.dcf.state.fl.us/programs/samh/FASTASMS/library/reports/examples/SMHTFs%2520Annual%2520Report%2520FY%252016-15%2520Final.docx&sref=U&ved=0ahUKEwiHmNXxuxyvMhUrVd8KHUY8ZBTsQFggEMAA&client=internal-uds-cse&cx=008503041933473383818:uddc80mgdlQ&usg=AOnvVaw02q5wIRntSUYcF7ulJOSl
9 We considered inflated value of $100 in 2008 in 2018. To calculate the inflation rate of US between 2008-2018.
10 Average of the actual costs of mental health treatment according to (slide#6):
http://www.namiflorida.org/storage/MikeHansenNAMIPresentation.pptx
11 The unit cost is calculated based on APS core budget divided by last number of FY Investigations.
12 https://www.adoptionscouncil.org/files/large/c29246a29dee09
The Florida Senate

APPEARANCE RECORD

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

Meeting Date 11/5/19

Bill Number (if applicable) 344

Topic Courts

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave

Phone 850-228-4243

Email zmith@aaarpc.org

City Tallahassee

State FL

Zip 32301

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

11-5-19

Meeting Date

344

Bill Number (if applicable)

SB 344 - COURTS

Topic

Catherine Ackerman

Name

Executive Director

Job Title

P.O. Box 4985

Address

34471

Phone

Ocala FL

Email

catherineAckerman@gmail.com

Representing

Florida Public Guardian Coalition

Applying at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

Meeting Date: Nov/5 2019

Bill Number: SB 344

Topic: COURTS

Name: SEX BUDS Clay County FL

Job Title: SEX TOY STORE Clay County FL

Address: 2908 Bluming Blvd.

Phone: 321677

Email: SEXBUDS1@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

Representing: Clay County FL

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.
I. Summary:

CS/SB 358 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, which persons may sue to recover property for the estate, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Prohibits an attorney who prepared or supervised the preparation of a trust from being compensated as a trustee unless the attorney is a relative of the “settlor” (trust creator) or makes specified disclosures to the settlor before the trust is created;
- Provides that causes of action that a decedent held at death are estate property, and therefore subject to the control and possession of the personal representative (not the beneficiaries);
- Brings more types of transactions involving a personal representative’s conflict of interest under the statute that renders these transactions voidable by an interested person;
- Clarifies what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.
II. Present Situation:

Conflict of Interests by Personal Representatives

Several types of transactions that involve a conflict of a personal representative’s interests are voidable by an interested person, except one who has consented after fair disclosure.\(^1\) However, transactions that involve a conflict of the personal representative’s interests are not voidable if the will or a contract entered into by the decedent expressly authorized the transaction, or if it is authorized by a court after notice to interested persons.\(^2\)

Compensation of Attorney Who Also Serves as Personal Representative or Trustee

An attorney licensed by The Florida Bar who serves as a personal representative of an estate and has rendered legal services in connection with the administration of the estate is allowed a fee for the legal services in addition to his or her fee as personal representative.\(^3\) However, the fee for legal services must be taken into account when determining the attorney’s compensation for non-legal services as personal representative.\(^4\)

Similarly, an attorney who provides legal services in his or her administration of the trust may accept reasonable compensation for the legal services in addition to his or her reasonable compensation as a trustee.\(^5\)

Acquiring Jurisdiction Over a Person by Service of Formal Notice

Section 731.301(2), F.S., provides that, in a probate proceeding, “formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead.” The courts have interpreted this to include jurisdiction over a person in an adversarial proceeding, including one in which an out-of-state law firm providing legal services for a Florida estate may be forced to pay money back to the estate.\(^6\)

However, the Real Property, Probate, and Trust Law Section of The Florida Bar asserts that the personal jurisdiction contemplated in s. 731.301(2), F.S., does not include this type of proceeding.\(^7\) Rather, the Section asserts that formal notice is sufficient for the court to acquire jurisdiction over a person for the purpose of determining the person’s rights to estate property.\(^8\)

\(^1\) Section 733.610, F.S.
\(^2\) Id.
\(^3\) Section 733.617, F.S.
\(^4\) Section 733.612(19), F.S.
\(^5\) Section 733.0708(3), F.S.
\(^6\) See, e.g., Rogers and Wells v. Winston, 662 So. 2d 1303 (Fla. 4th DCA 1995).
\(^7\) Real Property, Probate and Trust Law Section of The Florida Bar, White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient (2019) (on file with the Senate Committee on Judiciary).
\(^8\) Id.
Precious Metals and Collectible Coins as Probate Assets

Florida law does not specify whether bullion or coins that are not commonly used as currency constitute tangible personal property. And according to the Real Property, Probate and Trust Law Section of The Florida Bar, there is a lack of consensus among practitioners regarding this issue. Accordingly, it is unclear whether certain directions given in a will would apply to collectible coins and bullion. Moreover, it is unclear whether certain provisions of law apply to these items. For example, s. 732.515, F.S., requires that “items of tangible property” be “specifically disposed of” by the will or by a separate writing. Because it is unclear whether bullion and collectable coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

Notice of Administration

Upon being appointed, a personal representative must serve a notice of administration on a surviving spouse, beneficiaries, and other interested parties. This document advises them of important rights and responsibilities relating to the estate.

Notice of Right to Take Elective Share

Section 733.212(2)(e), F.S., requires that a notice of administration include a statement alerting a surviving spouse that he or she has a specified time to choose the elective share. However, the notice need not alert the spouse that he or she has the option to ask the court to extend this time. Accordingly, the notice of administration might lead a spouse to believe he or she does not have the option to move for the extension.

Notice of Right to Contest Trust Incorporated in a Will

A 2012 District Court of Appeal opinion appears to indicate that a person who wants to contest a trust that is incorporated by reference into a will must contest the will itself. Nonetheless, the law does not expressly require a personal representative to include this fact in the notice of administration. Moreover, there are different timeframes for contesting wills and trusts, and the timeframes for contesting a will might conclude sooner than those for contesting a trust. Accordingly, a person might have no idea that he or she must contest a will to contest a trust incorporated in the will, and might therefore fail to timely do so.

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10 Section 733.212(1), F.S.
11 Section 733.212(2), F.S.
12 See s. 732.2135(2), F.S.
13 See Pasquale v. Loving, 82 So. 3d 1205, 1207 (Fla. 4th DCA 2012) (stating “We note, first, that the Pasquales could not challenge the validity of the trust without also contesting the will. The trust was incorporated into the 2005 will.”)
14 A person may file a will contest within 3 months after receiving a notice of administration. Section 733.212(3), F.S. However, a challenge to a revocable trust within 6 months after receiving notice of the trust, or within the timeframes set forth within ch. 95, F.S., which can equate to 4 years from when a person learned of undue influence or some other basis for invalidating the trust. See s. 736.0604, F.S.; Flanzer v. Kaplan, 230 So. 3d 960 (Fla. 2d DCA 2017) (stating that the 4-year period begins to run when a beneficiary learns or should have learned of the wrongful conduct). Similarly, an action to challenge an irrevocable trust must be filed within 4 years after the person filing the action learned of or should have learned of the wrongful conduct. Id. at 961-62.
Actions for Recovery of Property Transferred Inter Vivos

The Florida Statutes grant a personal representative the right to sue to recover property for the estate.\(^{15}\) However, several Florida appellate courts have repeatedly indicated that this right is not exclusive, and thus that a beneficiary may also sue to recover property for the estate.\(^{16}\) Moreover, the personal representative is not an indispensable party to every action to recover property to the estate.\(^{17}\)

III. Effect of Proposed Changes:

Additional Information Required in a Notice of Administration

Under the bill, just as under current law, the notice of administration must inform the surviving spouse of the standard timeframes within which he or she must choose the elective share or waive his or her right to it. However, under the bill the notice must also advise the surviving spouse that he or she may move the court for an extension of time to choose the elective share.

The bill also requires that the notice of administration state, “under certain circumstances and by failing to contest the will,” an interested person might waive his or her right to contest a trust that is incorporated by reference into the will.

Formal Notice in a Probate Proceeding

The bill provides that formal notice is sufficient notice to a person for a court to adjudicate the person’s interest in the estate property or in the decedent’s protected homestead. However, the bill specifies, this service of formal notice is not sufficient for the court to “acquire personal jurisdiction over [the] person.” So, for instance, a person given (only) formal notice could not be forced into court and made to pay damages in a probate litigation proceeding.\(^{18}\)

Causes of Action that are Subject to Possession and Control of the Personal Representative

Under the bill, the definition of “property” in the probate code is broadened to include “causes of action of the estate and causes of action the decedent had at the time of death.” Therefore, these causes of action are subject to the “possession and control” of the personal representative, just as

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\(^{15}\) Section 733.607, F.S. For example, a personal representative might sue to recover a car from a person who tricked an incapacitated testator into giving him or her the car inter vivos, thus precluding a beneficiary from inheriting the car unless the wrongful transfer is reversed.

\(^{16}\) See, e.g., Parker v. Parker, 185 So. 3d 616 (Fla. 4th DCA 2016); but see All Children’s Hospital, Inc. v. Owens, 754 So. 2d 802, 806 (Fla. 2d DCA 2000) (stating that the “personal representative has specific statutory authority to recover estate assets,” and that the court “saw little value” in allowing beneficiaries to pursue their own actions to recover assets that were wrongfully transferred inter vivos).

\(^{17}\) See, e.g., Id.; DeWitt v. Duce, 408 So. 2d 216 (Fla. 1981).

\(^{18}\) According to the Real Property, Probate and Trust Law Section, the changes to s. 731.301(2), F.S., are intended to overrule Rogers and Wells v. Winston, 662 So. 2d 1303 (Fla. 4th DCA 1995) in which the Fourth DCA found that formal notice to a New York law firm handling Florida probate proceedings gave the trial court jurisdiction over the firm with respect to a payment dispute. See Real Property, Probate and Trust Law Section of The Florida Bar, White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient (2019) (on file with the Senate Committee on Judiciary). The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process.
other items of estate property are, such as the decedent’s timepiece or automobile.\textsuperscript{19} Thus, it appears that the personal representative would be an indispensable party to these cases.\textsuperscript{20}

**Personal Representative’s Conflict of Interest**

The bill renders voidable more types of sales, transactions, and encumbrances that involve a personal representative’s conflict of interest than current law. Subject to exceptions, current law renders voidable a sale or encumbrance of estate assets to any corporation or trust in which the personal representative has a substantial beneficial interest. The bill also renders voidable any sale or encumbrance to a corporation, trust, or other entity in which the personal representative or his or her spouse, agent, or attorney has a substantial beneficial or ownership interest.

**Compensation of a Personal Representative or Trustee Who is also an Attorney**

The bill prohibits an attorney from being compensated as a personal representative if the attorney prepared or supervised the execution of a will that nominated the attorney or person related to the attorney as personal representative. However, the prohibition does not apply if the attorney or person nominated is related to the testator. The prohibition also does not apply if the attorney discloses the following information prior to the execution of the will:

- Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
- Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
- Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

However, for these disclosures to be sufficient, the testator must execute a written statement acknowledging that the disclosures were made before the will was executed. And the written statement must substantially be in the form set forth in the bill.

The bill provides virtually identical requirements for disclosures and acknowledgements regarding an attorney who serves as a trustee and desires to be compensated both in his or her role as attorney and as a trustee.

**Precious Metals**

The bill provides that for the purposes of the probate code, precious metals in any tangible form, including bullion or coins kept for purposes such as collecting and not for use as legal tender for

\textsuperscript{19} Section 733.607, F.S. See also s. 733.612, F.S. (granting a personal representative broad and specific authority to control estate property).

\textsuperscript{20} Assuming the bill makes the personal representative indispensable in “causes of action of the estate and causes of action the decedent had at the time of death,” the bill effectively abrogates Parker v. Parker, 185 So. 3d 616 (Fla. 4th DCA 2016) and cases cited by the Parker court. In Parker, the Court held that the personal representative was not indispensable to several causes of action that were held by the decedent at death or that were otherwise causes of action of the estate, such as undue influence and replevin.
payment are tangible personal property. The bill provides that this classification of bullion and coins clarifies current law. Accordingly, the bill states that these clarifying provisions apply to all written instruments, as well as to all probate proceedings except those proceedings in which a disposition of these items has not been finally determined.

The bill takes effect October 1, 2020, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill includes two sections that are expressly intended to apply retroactively. The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively. 21 First, there must be “clear evidence of legislative intent to apply the statute retrospectively.” 22 If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.” 23 Retroactive application is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated. 24

22 Metropolitan Dade County v. Chase Federal Housing Corp., 737 So. 3d 494 (Fla. 1999).
23 Id.
24 Id. at 503 (citing McCord v. Smith, 43 So. 2d 704, 708-09 (Fla. 1949).
Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.\(^{25}\) Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”\(^{26}\) Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.\(^{27}\)

The bill’s provisions that are intended for retroactive application do not appear to be likely to impair vested rights. However, this analysis is inherently fact-specific, and therefore difficult to perform in the abstract. Accordingly, as these provisions are applied to myriad unique circumstances, it is possible that a court may find that one or more of the provisions has destroyed a vested right in a given case, and therefore cannot be applied retroactively in that case.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   None.

B. Private Sector Impact:
   None.

C. Government Sector Impact:
   None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 731.201, 731.301, 733.212, 733.610, 733.612, 733.617, and 736.0708.

The bill creates section 731.1065 of the Florida Statutes.


\(^{26}\) \textit{Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n, Inc.}, 127 So. 3d 1258, 1272 (Fla. 2013) (citing \textit{Alamo Rent-A-Car, Inc. v. Mancusi}, 632 So. 2d 1352, 1358 (Fla. 1994); \textit{City of Lakeland v. Catinella}, 129 So. 2d 133, 136 (Fla. 1961)).

IX. Additional Information:

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

**CS by Judiciary on November 5, 2019**
The committee substitute removes a provision of the bill that expressly stated that a personal representative has the exclusive right to maintain an action to recover estate property.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
The Committee on Judiciary (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 86 - 133
and insert:

(2) In a probate proceeding, formal notice to a person is sufficient notice for the court to exercise its in rem to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate property or in the decedent’s protected homestead. The court does not acquire personal jurisdiction over a person by service of formal notice.

Section 4. The amendment made by this act to s. 731.301,
Florida Statutes, applies to all proceedings pending on or before, or commenced after, the date this act becomes a law.

Section 5. Paragraph (e) of subsection (2) of section 733.212, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

733.212 Notice of administration; filing of objections.—
(2) The notice shall state:
(e) That, unless an extension is granted pursuant to s. 732.2135(2), an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent’s death.
(f) That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right to contest the validity of a trust or other writing incorporated by reference into a will.

And the title is amended as follows:
Delete lines 2 - 18
and insert:
An act relating to estates and trusts; creating s. 731.1065, F.S.; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; providing for retroactive application; amending s. 731.201, F.S.; revising the definition of the term “property”; amending s.
731.301, F.S.; specifying that formal notice is not sufficient to invoke a court’s personal jurisdiction over a person receiving such formal notice; providing applicability; amending s. 733.212, F.S.; revising the required contents of a notice of administration; amending s. 733.610, F.S.;
Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective July 1, 2020, section 731.1065, Florida Statutes, is created to read:

Florida Senate - 2020

By Senator Berman

A bill to be entitled

An act relating to decedents’ property; creating s. 731.1065, F.S.; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; providing for retroactive application; amending s. 731.201, F.S.; revising the definition of the term “property”; amending s. 731.301, F.S.; specifying that formal notice is not sufficient to invoke a court’s personal jurisdiction over a person receiving such formal notice; providing applicable; amending s. 733.212, F.S.; revising the required contents of a notice of administration; amending s. 733.607, F.S.; specifying that a personal representative has the exclusive right to maintain an action to recover possession of property or determine the title to property; specifying that a personal representative does not have a duty to maintain certain causes of action; amending s. 733.610, F.S.; expanding the list of sales or encumbrances that are voidable by interested persons under certain circumstances; amending s. 733.612, F.S.; revising the types of claims and proceedings a personal representative may properly prosecute or defend; amending s. 733.617, F.S.; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed; requiring the testator to execute a written statement that acknowledges that certain disclosures were made; providing requirements for the written statement; specifying when an attorney is deemed to have prepared or supervised the execution of a will; specifying how a person may be related to an individual; specifying when an attorney or a person related to the attorney is deemed to have been nominated in a will; providing construction; providing applicability; amending s. 736.0708, F.S.; specifying that certain attorneys and persons are not entitled to compensation for serving as a trustee unless the attorney or person is related to the settlor or unless certain disclosures are made before the trust instrument is executed; requiring a settlor to execute a written statement that acknowledges that certain disclosures were made; providing requirements for the written statement; specifying when an attorney is deemed to have prepared or supervised the execution of a trust instrument; specifying how a person may be related to an individual; specifying when an attorney or a person related to the attorney is deemed appointed in a trust instrument; providing construction; providing applicability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:
In a probate proceeding, formal notice is sufficient to acquire in rem jurisdiction over the person receiving formal notice.

Notice. —
(1) For the purposes of the code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

(2) This section is intended to clarify existing law and applies retroactively to all written instruments executed before, on, or after July 1, 2020, as well as all proceedings pending or commenced before, on, or after July 1, 2020, in which the disposition of precious metals in any tangible form has not been finally determined.

Section 2. Subsection (32) of section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(32) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership, including causes of action of the estate and causes of action the decedent had at the time of death.

Section 3. Effective upon this act becoming a law, subsection (2) of section 731.301, Florida Statutes, is amended to read:

731.301 Notice.—
(2) In a probate proceeding, formal notice is sufficient to acquire in rem jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving formal notice.

Section 4. The amendment made by this act to s. 731.301, Florida Statutes, applies to all proceedings pending on or before, or commenced after, the date this act becomes a law.

Section 5. Paragraph (e) of subsection (2) of section 733.212, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

733.212 Notice of administration; filing of objections.—
(2) The notice shall state:
(e) That, unless an extension is granted pursuant to s. 732.2135(2), an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent’s death.

(f) That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right to contest the validity of a trust or other writing incorporated by reference into a will.

Section 6. Subsection (1) of section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—
(1) Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property, except the
is voidable by any interested person except one who has consented after fair disclosure, unless:

(1) The will or a contract entered into by the decedent expressly authorized the transaction; or

(2) The transaction is approved by the court after notice to interested persons.

Section 8. Subsection (20) of section 733.612, Florida Statutes, is amended to read:

733.612 Transactions authorized for the personal representative; exceptions.—Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate, of the decedent’s property, and of the personal representative.

Section 9. Subsection (6) of section 733.617, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

733.617 Compensation of personal representative.—

(6) Except as otherwise provided in this section, if the personal representative is a member of The Florida Bar and has rendered legal services in connection with the administration of the estate, then in addition to a fee as personal representative, there also shall be allowed a fee for the legal services rendered.

(8)(a) An attorney serving as a personal representative, or a person related to the attorney, is not entitled to compensation for serving as a personal representative if the attorney prepared or supervised the execution of the will that is otherwise adjudicated by court order.
The testator must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the will. The written statement must be in a separate writing from the will but may be annexed to the will. The written statement may be executed before or after the execution of the will in which the attorney or related person is nominated as the personal representative.

2. The written statement must be in substantially the following form:

I, ...(Name)..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a nominated personal representative in my will or codicil dated ...(insert date)....

Before executing the will or codicil, I was informed that:

1. Subject to certain statutory limitations, most family members, regardless of their residence, and any other individuals who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;

2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and

3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

(b) The testator must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the will. The written statement must be in a separate writing from the will but may be annexed to the will. The written statement may be executed before or after the execution of the will in which the attorney or related person is nominated as the personal representative.

2. The written statement must be in substantially the following form:

I, ...(Name)..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a nominated personal representative in my will or codicil dated ...(insert date)....

Before executing the will or codicil, I was informed that:

1. Subject to certain statutory limitations, most family members, regardless of their residence, and any other individuals who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;

2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative.

3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

...(Signature)...
...(Testator)...
...(Insert date)...

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared or supervised the execution of a will if the preparation or supervision of the execution of the will was performed by an employee or attorney employed by the same firm as the attorney at the time the will was executed.

2. A person is “related” to an individual if, at the time the attorney prepared or supervised the execution of the will,
Section 10. Subsection (4) is added to section 736.0708, Florida Statutes, to read:

736.0708 Compensation of trustee.—

(4) (a) An attorney serving as a trustee, or a person related to the attorney as personal representative, co-personal representative, successor, alternate personal representative in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to nominate the personal representative and the attorney or person related to the attorney was nominated using that power.

(d) Other than compensation payable to the personal representative, this subsection does not limit any rights or remedies that any interested person may have at law or in equity.

(e) The failure to obtain an acknowledgment from the testator under this subsection does not disqualify a personal representative from serving and does not affect the validity of a will.

(f) This subsection applies to all nominations made pursuant to a will.

1. Executed by a resident of this state on or after October 1, 2020; or

2. Republished by a resident of this state on or after October 1, 2020, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.

Section 10. Subsection (4) is added to section 736.0708, Florida Statutes, to read:

736.0708 Compensation of trustee.—

(4) (a) An attorney serving as a trustee, or a person related to the attorney as personal representative, co-personal representative, successor, alternate personal representative in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to nominate the personal representative and the attorney or person related to the attorney was nominated using that power.

(d) Other than compensation payable to the personal representative, this subsection does not limit any rights or remedies that any interested person may have at law or in equity.

(e) The failure to obtain an acknowledgment from the testator under this subsection does not disqualify a personal representative from serving and does not affect the validity of a will.

(f) This subsection applies to all nominations made pursuant to a will.

1. Executed by a resident of this state on or after October 1, 2020; or

2. Republished by a resident of this state on or after October 1, 2020, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.
for legal services rendered to the trustee.

(b) The settlor must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the trust instrument. The written statement must be in a separate writing from the trust instrument but may be annexed to the trust instrument. The written statement may be executed before or after the execution of the trust in which the attorney or related person is appointed as the trustee.

2. The written statement must be in substantially the following form:

I, ...(Name)..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a trustee in my trust instrument dated ...(insert date)....

Before executing the trust, I was informed that:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including family members, friends, and corporate fiduciaries, is eligible to serve as a trustee.

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee.

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the trustee.

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared, or supervised the execution of, a trust instrument if the preparation, or supervision of the execution, of the trust instrument was performed by an employee or attorney employed by the same firm as the attorney at the time the trust instrument was executed.

2. A person is "related" to an individual if, at the time the attorney prepared or supervised the execution of the trust instrument, the person is:

   a. A spouse of the individual;
   b. A lineal ascendant or descendant of the individual;
   c. A sibling of the individual;
   d. A relative of the individual or of the individual’s spouse with whom the attorney maintains a close, familial relationship;
   e. A spouse of a person described in sub-subparagraphs b.-d.;
   f. A person who cohabitates with the individual; or
   g. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed.

3. An attorney or a person related to the attorney is deemed appointed in the trust instrument when the trust instrument appoints the attorney or the person related to the attorney as trustee, co-trustee, successor, or alternate trustee.
in the event another person nominated is unable to or unwilling
to serve, or provides the attorney or any person related to the
attorney with the power to appoint the trustee and the attorney
or person related to the attorney was appointed using that
power.

(d) Other than compensation payable to the trustee, this
subsection does not limit any rights or remedies that any
interested person may have at law or equity.

(e) The failure to obtain an acknowledgment from the
settlor under this subsection does not disqualify a trustee from
serving and does not affect the validity of a trust instrument.

(f) This subsection applies to all appointments made
pursuant to a trust agreement:

1. Executed by a resident of this state on or after October
   1, 2020; or

2. Amended by a resident of this state on or after October
   1, 2020, if the trust agreement nominates the attorney who
   prepared or supervised the execution of the amendment or a
   person related to such attorney as trustee.

Section 11. Except as otherwise expressly provided in this
act and except for this section, which shall take effect upon
this act becoming a law, this act shall take effect October 1,
2020.
To: Senator David Simmons, Chair
   Committee on Judiciary

Subject: Committee Agenda Request

Date: October 15, 2019

I respectfully request that Senate Bill #358, relating to Decedents’ Property, be placed on the:

☑ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Jose Javier Rodriguez, Vice Chair
   Tom Cibula, Staff Director

File signed original with committee office
Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient.

I. SUMMARY

Appellate court opinions in several cases have determined that service by formal notice under the Florida Probate Rules is sufficient for a probate court to acquire in personam jurisdiction over persons deemed to be “interested persons” under the Florida Probate Code. There is no authority in statutes or the probate rules suggesting that to be the law, and the Ad Hoc Jurisdiction & Service of Process Committee, although acknowledging that it is possible to provide such authority in a manner that complies with due process, believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure.

II. CURRENT SITUATION

In a series of decisions, the Second District Court of Appeal has held that those who are deemed to be “interested persons” within the meaning of F.S. 731.201(23) (i.e., those who may reasonably be expected to be affected by the outcome of a particular proceeding) may be subjected to personal jurisdiction by the service of formal notice pursuant to F.S. 731.301(2). Payette v. Clark, 559 So.2d 630 (2d DCA 1990); Kountze v. Kountze, 20 So.3d 428 (2d DCA 2009); Hall v. Tungett, 980 So.2d 1289 (2d DCA 2008); Galego v. Robinson, 695 So.2d 443 (2d DCA 1997). The Fourth District Court of Appeal has agreed, at least in cases where law firms or attorneys have rendered legal services to a Florida probate estate, that they are interested persons and that in personam jurisdiction (for the purpose of reviewing and potentially ordering refund of fees paid) could be acquired by service of formal notice. Rogers & Wells v. Winston, 662 So.2d 1303 (4th DCA 1995); Simmons v. Est. of Baranowitz, 189 So.3d 819 (4th DCA 2015).

Prior to October 1, 2010, when all of the foregoing cases except Baranowitz were decided, F.S. 731.301(2) read as follows:

(2) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate.

Effective October 1, 2010, the subsection was amended to read as it does today:

(2) In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the
person’s interest in the estate or in the decedent’s protected homestead. [Emphasis added].

By statute, probate proceedings are *in rem*, meaning that the court has jurisdiction over the will, if any, the tangible and intangible assets of the decedent’s estate (wherever located), and real estate located in Florida, all without the necessity of any original process. F.S. 731.105; *Also see In re: Estate of Williamson*, 95 So.2d 244 (Fla. 1957). Service by formal notice is one method of complying with due process requirements necessary to invoke the court’s *in rem* jurisdiction over those receiving the notice to the extent of their interest in the estate. Even without addition of the phrase, “in a probate proceeding,” the statute is easily read to be addressing only a means of notice to persons subject to the court’s *in rem* jurisdiction that is calculated to effect due process over those receiving the notice.

Formal notice is not judicial process, and is not the equivalent of a summons. For example, nowhere in the Florida Probate Code does it provide that a default may be entered after service of Formal Notice, as would be the case with judicial process. Formal notice does not support *in personam* jurisdiction because formal notice is not judicial process, is not issued under the seal of the court, nor is it typically served as provided in Chapter 48. If the clerk’s seal is not affixed to judicial process, it is void and cannot be used to obtain personal jurisdiction. 12A FLA.JUR2d Courts and Judges §§ 53-55 and 61-62. While acknowledging that it is possible to provide such authority in a manner that complies with due process, the Committee believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other judicial process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure. By requiring compliance with the existing procedural rules for acquiring personal jurisdiction, the safeguards that assure actual notice by the person over whom personal jurisdiction is sought are preserved.

Personal jurisdiction is neither contemplated nor required in a majority of adversary proceedings in probate. Of those specific adversary proceedings listed in Probate Rule 5.025(a) that require service of formal notice, only surcharge of a personal representative or guardian requires *in personam* jurisdiction, and those fiduciaries have submitted to the court’s personal jurisdiction by instituting or participating in the court proceedings. See *Payette v. Clark*, 559 So.2d 630 (2d DCA 1990) (filing of a petition for administration subjects the personal representative to *in personam* jurisdiction “for all purposes related to the administration”).

Thus the formal notice procedure was never intended to be a method of obtaining personal jurisdiction over persons having an interest in the probate estate. In *Re Estate of Black*, 528 So.2d 1316 (Fla. 2d DCA 1988); *In Re Estate of Vernon*, 608 So.2d 510 (Fla. 4th DCA 1992). Formal notice is a method of service of notice to a person subject to the court’s *in rem* jurisdiction. It is not a summons or judicial process that confers *in personam* jurisdiction over the recipient.
The notion that any person determined to be an “interested person” can be subjected to personal jurisdiction by service of formal notice is incorrect and can be made clear by the proposed amendment to F.S. 731.301.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment to section 7331.301(2) provides:

In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

The proposed amendment would change the result in each of the cases cited in the first paragraph of Section II above. In those factual situations it would be necessary for the petitioners to obtain personal jurisdiction over the adverse parties by traditional means such as service of a summons pursuant to Chapter 48, Florida Statutes.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

Florida Justice Association, Inc.
A bill to be entitled

An act relating to personal jurisdiction of probate courts over persons having an interest in an estate; amending s. 731.301, F.S.; providing that in personam jurisdiction over interested persons cannot be acquired by service of formal notice.

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

Section 1. Subsection (2) of section 731.301, Florida Statutes, is amended to read:

731.301 Notice

(2) In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

Section 2. This act shall take effect upon becoming law and shall apply to formal notice given on or after such date.
The Florida Bar
Real Property, Probate and Trust Law Section
Probate Law and Procedure Committee
Coins and Bullion Subcommittee

WHITE PAPER

Proposed Addition of § 731.1065, Florida Statutes

I. SUMMARY

The proposed bill would create § 731.1065, Fla. Stat. to: i) specify that precious metals in any tangible form, such as bullion and coins that are kept apart from their normal use as legal tender for payment, constitute tangible personal property for purposes of the Florida Probate Code without foreclosing the possibility that other items may also constitute tangible personal property; and ii) create a bright line rule as to the disposition of such items identified in a separate writing that complies with § 732.515, Fla. Stat.

II. CURRENT SITUATION

The relevant Florida law does not specify whether certain types of precious metals, such as coins and bullion, that are regularly held by individuals dying in this State constitute “tangible personal property” (which is subject to devise by a tangible personal property clause in a will or a separate writing) or intangible property (which generally passes in accordance with a residuary clause in a will in absence of other specific direction). Specifically:

- The Florida Probate Code does not specify whether these items are “tangible personal property.”
- No Florida cases specifically address this issue; only a Delaware state case has analyzed § 732.515. In re Last Will and Testament and Trust Agreement of Moor, 879 A.2d 648, 649 (Del.Ch. Jun 08, 2005) (court noted that money is not specifically excluded under Section 732.515; did not specifically address coins or bullion).
- There is a lack of consensus among practitioners on this issue.
The subcommittee researched the probate code in other states and did not find any state classifying precious metals as intangible property. Washington and California’s probate code specifically provide that precious metals are tangible personal property (in each state’s separate writing statute).

III. EFFECT OF THE PROPOSED CHANGE

Section X. Section 731.1065, Florida Statutes, is created to read:

In this code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

Section X. The amendment made by this act to s. 731.1065 is intended to clarify existing law, and applies retroactively to all written instruments executed before or after July 1, 2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.

While the definition does not create a bright line rule of construction for purposes of a tangible personal property clause in a will, the definition serves as indicia that bullion and coins are ordinarily considered tangible personal property in the probate context. As such, the definition may provide clarity in circumstances where the Will does not specify what tangible personal property is and no other evidence of the testator’s intent is apparent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES - None.

VIII. EFFECTIVE DATE

The addition of § 731.1065, Fla. Stat. is remedial in nature, is intended to clarify existing law, and would apply retroactively to all written instruments executed before or after July 1,
2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.
The Florida Senate

APPEARANCE RECORD

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

Meeting Date: 11/5/19

Bill Number (if applicable): 358

Amendment Barcode (if applicable): Lego 5556

Topic: Decedent's Property

Name: Sarah Butters

Job Title:

Address: 4049 Shady View Lane

Phone: (850) 425-5447

Email: SarahButters@ausley.com

City: Tallahassee

State: FL

Zip: 32311

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing: RPPTL - FL Bar

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)
I. Summary:

SB 374 clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially choose whether to pursue remedies in a judicial proceeding or an administrative proceeding.

II. Present Situation:

Overview

This state’s District Courts of Appeal have held that the Florida Fair Housing Act (FFHA) requires an alleged victim of housing discrimination to exhaust his or her administrative remedies before filing a civil action under the FFHA. However, federal District Courts (trial courts) in Florida have repeatedly disagreed with this interpretation, as has the U.S. Department of Housing and Urban Development (HUD).

HUD has also repeatedly stated that the FFHA, as interpreted by the DCAs, is inconsistent with the federal Fair Housing Act. Accordingly, HUD has advised the Commission for several years
that the Commission may be disqualified from receiving federal funding from HUD through the Fair Housing Assistance Program if Florida law is not conformed to the federal act.

The Florida Fair Housing Act (FFHA)

**Purpose of the FFHA**

The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.\(^1\) In addition, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.\(^2\)

**Timeline for Filing and Processing Claims**

A person alleging discrimination under the FFHA has 1 year after the discriminatory housing practice to file a complaint with the Commission.\(^3\) The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.\(^4\) The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.\(^5\) If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the victim may initiate a civil action or file petition for an administrative determination.\(^6\) If the Commission finds reasonable cause to believe that housing discrimination has occurred, the claimant may request that the Attorney General bring an action against the respondent.\(^7\)

A civil action must be commenced within 2 years after the alleged discriminatory act occurred.\(^8\) The court may continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.\(^9\) If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief, which may include compensatory or punitive damages.\(^10\) 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. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.\(^11\)

The Commission may institute a civil action if it is unable to achieve voluntary compliance with the FFHA and the Commission is not required to have petitioned for an administrative hearing or

\(\text{References:} \)

1. Section 760.23(1), F.S.
2. Sections 760.23(6)-(9), F.S.
3. Section 760.34(1) and (2), F.S.
4. Section 760.34(1), F.S.
5. Id.
6. Section 760.34(4), F.S.
7. Id.
8. Section 760.35(1), F.S.
9. Id.
10. Section 760.35(2), F.S.
11. Section 760.35(3), F.S.
exhausted its administrative remedies prior to bringing a civil action. Remedies available under the FFHA include fines and actual and punitive damages. The court may also award reasonable attorney fees and costs to the Commission.

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law. The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.

State and Federal Courts Disagree Regarding the Need to Exhaust Administrative Remedies

In at least three cases, the District Courts of Appeal have held that a person must exhaust his or her administrative remedies before filing a civil action alleging housing discrimination under the FFHA. However, the United States District Courts (federal trial courts) for the Middle and Southern Districts of Florida have held the opposite. The different outcomes are the result of different interpretations of the FFHA, thus suggesting that the FFHA could be clearer as to whether a person must exhaust his or her administrative remedies before filing a civil action.

The Fair Housing Assistance Program

Eligibility for Participation in the FHAP

The federal Fair Housing Assistance Program (FHAP) permits the United States Department of Housing and Urban Development (HUD) to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. To be eligible for participation in the FHAP, a state or local agency must enforce a fair housing law that is substantially equivalent to the federal Fair Housing Act. HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.

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12 Section 760.34(7)(a), F.S.
13 Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to $10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to $25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to $50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.
14 Section 760.34(7)(c), F.S.
15 Sections 760.22(9) and 760.34(8), F.S.
16 Section 760.34(8), F.S.
17 See Housing Opportunities Project v. SPV Realty, LC 212 So. 3d 419 (Fla. 3d DCA 2016); Belletete v. Halford, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); Sun Harbor Homeowners’ Ass’n, Inc. v. Bonura, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).
20 Id.
21 Id.
The Florida Commission on Human Relations, and its Prospects for Continued Eligibility

In this state, the Florida Commission on Human Relations is the main agency certified as substantially equivalent.\textsuperscript{22} Monies the Commission receives from HUD under the FHAP are placed into the Commission’s Operating Trust Fund. However, as recently as 2016, HUD warned the Commission by letter that it was at risk of suspension and withdrawal from the FHAP because the FFHA, which the Commission administers, is not substantially equivalent to the federal Fair Housing Act.\textsuperscript{23} Particularly, HUD stated that the laws are not substantially equivalent because the federal Fair Housing Act permits a person alleging housing discrimination to file a civil action regardless of whether he or she has exhausted administrative remedies, while the FFHA, as interpreted by the DCAs, requires the exhaustion of administrative remedies before filing a civil action.\textsuperscript{24}

In 2019, the FHCR was suspended by HUD on different grounds.\textsuperscript{25} In correspondence pertaining primarily to those other issues, HUD nonetheless pointed out the “continuing substantial equivalency issues” created by the FFHA as interpreted by the DCAs.\textsuperscript{26}

HUD’s Reimbursement of the Commission under the FHAP, by the Numbers

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relation’s Operating Trust Fund. In Fiscal Year 2018-2019, these payments totaled $507,061 for the 2018 grant period. This amount was 45.99\% of the Commission’s Operating Trust fund for that year.\textsuperscript{27} In Fiscal Year 2017-18, these payments totaled $611,721, which was 49.89\% of the Commission’s Operating Trust Fund.\textsuperscript{28}

III. Effect of Proposed Changes:

The bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;

\textsuperscript{23} See Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016); Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).
\textsuperscript{24} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (Oct. 31, 2019) (on file with the Senate Committee on Judiciary).
\textsuperscript{28} Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).
• The Commission has resolved a complaint (if the victim chose to file one); or
• Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially whether to pursue remedies in court or through an administrative proceeding.

IV. Constitutional Issues:

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

B. Public Records/Open Meetings Issues:
   
   None.

C. Trust Funds Restrictions:
   
   None.

D. State Tax or Fee Increases:
   
   None.

E. Other Constitutional Issues:
   
   None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   
   None.

B. Private Sector Impact:
   
   None.

C. Government Sector Impact:
   
   The passage of the bill might be necessary to allow the Florida Commission on Human Relations to continue to receive federal reimbursement for the Commission’s resolution
of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this funding.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to housing discrimination; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to pursue certain other remedies before commencing a civil action; making technical changes; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of certain circumstances; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; making technical changes; providing an effective date.

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

Section 1. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute that makes unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term “public accommodations” does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 2. Section 760.34, Florida Statutes, is amended to read:

760.34 Enforcement.—
(1) 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. Complaints shall be in writing and shall contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after
receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the aggrieved person whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who files a complaint under subsection (1) must be filed within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must be verified.

(3) If, wherever a local fair housing law provides rights to obtain voluntary compliance with ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement officer has, within 30 days after the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37. The aggrieved person may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination under pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the aggrieved person, the Attorney General may bring an action in the name of the state on
(5) In any proceeding brought under pursuant to this section or s. 760.35, the burden of proof is on the complainant.

(6) If, whenever an action filed in court under pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

(7) (a) The commission may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with ss. 760.20-760.37. The commission does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action.

(b) The court may impose the following fines for each violation of ss. 760.20-760.37:

1. Up to $10,000, if the respondent has not previously been found guilty of a violation of ss. 760.20-760.37.

2. Up to $25,000, if the respondent has been found guilty of one prior violation of ss. 760.20-760.37 within the preceding 5 years.

3. Up to $50,000, if the respondent has been found guilty of two or more violations of ss. 760.20-760.37 within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of ss. 760.20-760.37, the financial circumstances of the respondent, and the goal of deterring future violations of ss. 760.20-760.37.

(c) The court shall award reasonable attorney fees and costs to the commission in any action in which the commission prevails.

(8) Any local agency certified as substantially equivalent to the commission may institute a civil action in any appropriate court, including circuit court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action. The court may impose fines as provided in the local fair housing law.

Section 3. Section 760.35, Florida Statutes, is amended to read:

760.35 Civil actions and relief; administrative procedures.—

(1) An aggrieved person may commence a civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought under pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before prior to the issuance of any court order issued under the authority of ss.
19-00605-20 2020374__

19-00605-20 2020374__

1. If the commission finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1).

2. The aggrieved person aggrieved may request

Page 7 of 8
CODING: Words stricken are deletions; words underlined are additions.
To: Senator David Simmons, Chair
   Judiciary Committee

Subject: Committee Agenda Request

Date: October 23, 2019

I respectfully request that Senate Bill #374, relating to Housing Discrimination, be placed on the:

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

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office
Please see below

We are currently in state fiscal year 19/20 the % will be provided after the full 2019 grant period ends in 2020.

In State Fiscal Year 2018-19, the Commission received $507,061 from HUD for the 2018 grant period, which was 45.99% of the Commission’s Operating Trust Fund for that year.

Christopher C. Turner
Deputy Director of External and Legislative Affairs
Florida Commission on Human Relations

4075 Esplanade Way, Room 110
Tallahassee, FL 32399

o: 850-907-6848
c: 850-901-8761
f: 850-487-1007

United in One Goal: Equal Opportunity and Mutual Respect

Correspondence made or received in connection with the transaction of official business by a state agency, unless exempt or made confidential by law, is considered a public record and may be subject to disclosure upon request.
Perfect. Thanks!

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Thursday, October 31, 2019 3:41 PM
To: Stallard, Adam <Stallard.Adam@flsenate.gov>
Subject: RE: Urgent: Updated Information Request

I just looked out the window and she is out of the office, I will get those updated numbers back to you tomorrow morning.

Christopher C. Turner
Deputy Director of External and Legislative Affairs
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
Phone: 850-907-6848
Fax: 850-487-1007

United in One Goal: Equal Opportunity and Mutual Respect
<image001.jpg>
Correspondence made or received in connection with the transaction of official business by a state agency, unless exempt or made confidential by law, is considered a public record and may be subject to disclosure upon request.

From: Stallard, Adam <Stallard.Adam@flsenate.gov>
Sent: Thursday, October 31, 2019 3:40 PM
To: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Subject: RE: Urgent: Updated Information Request

Chris,

One follow-up: What percentage of the Operating Trust Fund did the 18-19 receipts equate to? Same question for 19-20 receipts.

Thanks much,

Adam

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Thursday, October 31, 2019 2:07 PM
To: Stallard, Adam <Stallard.Adam@flsenate.gov>; Rochester, Candace <Candace.Rochester@myfloridahouse.gov>
Subject: Re: Urgent: Updated Information Request

Adam,

Attached is the information you requested. I copied Candace from House Judiciary on this. Please let me know if there are any more questions.
Fiscal Year 18-19 HUD receipts were $383,509

Christopher C. Turner
Deputy Director of External and Legislative Affairs
Florida Commission on Human Relations

4075 Esplanade Way, Room 110
Tallahassee, FL 32399

o: 850-907-6848
c: 850-901-8761
f: 850-487-1007

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On Oct 29, 2019, at 11:14 AM, Stallard, Adam <Stallard.Adam@fisenate.gov> wrote:

Christopher,

As I’m sure you noticed, SB 374 is on the agenda for our committee’s Nov. 5 meeting. Of course, SB 374 is functionally identical to SB 958 (2019). Accordingly, I am looking to update the analysis.

Particularly, I’d like to know what the latest word is from HUD on its warning that the Commission might be suspended and withdrawn from the Fair Housing Assistance Program. (The latest word that I am aware of, as reflected in last session’s analysis, was a 2016 letter from Lynn Grosso at HUD to your Executive Director.)

Also, I’d like to get updates to the figures highlighted in the below excerpt from last year’s analysis.
HUD’s Reimbursement of the Commission under the FHAP, by the Numbers

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relation’s Operating Trust Fund. In Fiscal Year 2017-18, these payments totaled $611,721, which was 49.89% of the Commission’s Operating Trust Fund.\(^1\) In Fiscal Year 2017-18, the Commission received $605,404 from HUD, which was 48.10% of the Commission’s Operating Trust Fund for that year.\(^2\)

If you can provide me the information requested by Thursday COB, that’d be great.

Adam Stallard  
Attorney  
Committee on Judiciary  
The Florida Senate  
515 Knott Building  
404 South Monroe Street  
Tallahassee, Florida 32399  
(850) 487-5198

\(^{1}\) Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).  
\(^{2}\) Id.
Adam,

Please call me at the cell number listed below if you need anything additionally. Thank you.

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<tr>
<th></th>
<th>2016/2017</th>
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<td>EEOC Federal Contract</td>
<td>653,150</td>
<td>614,500</td>
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<tr>
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</tr>
<tr>
<td>HUD Registration</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**HUD percentage** 0.4810 0.4989

Christopher C. Turner  
Deputy Director of External and Legislative Affairs  
Florida Commission on Human Relations

4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

o: 850-907-6848  
c: 850-901-8761  
f: 850-487-1007

United in One Goal: Equal Opportunity and Mutual Respect
Correspondence made or received in connection with the transaction of official business by a state agency, unless exempt or made confidential by law, is considered a public record and may be subject to disclosure upon request.
Ms. Michelle Wilson  
Executive Director  
Florida Commission on Human Relations  
2009 Apalachee Parkway  
Tallahassee, FL 32301-4857

Dear Ms. Wilson:

This letter pertains to the issue of the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies under the Florida Fair Housing Act (FFHA) as a precondition to filing a claim in state court.1 While this issue has been the subject of correspondence between HUD and the Florida Commission on Human Relations (FCHR) since at least 2008,2 as of this date the issue remains unresolved.3 By letter of July 10, 2013, FCHR has advised that in order to ensure continued substantial equivalence between the FFHA and the federal Fair Housing Act, and by extension, to ensure continued participation in the Fair Housing Assistance Program, “Florida should enact an amendment or regulation effectively addressing this issue prior to FCHR’s due date for recertification, which is [January 25, 2016].”4

Pursuant to the regulations at 24 C.F.R. part 115 governing participation in the Fair Housing Assistance Program (FHAP), this letter will serve as official notification that HUD will proceed to suspend the participation of the FCHR in the Fair Housing Assistance Program (FHAP) unless the issue of exhaustion of administrative remedies is resolved to HUD’s satisfaction or before January 25, 2016. HUD will continue to refer complaints to FCHR in the interim.

I. Background

As you know, in 2004 the Florida District Court of Appeals for the Fourth District dismissed a case brought by a plaintiff under the Florida Fair Housing Act alleging eviction because of a disability. The court held that plaintiff was barred from filing in state court by the doctrine of exhaustion of administrative remedies because he had not availed himself of the administrative process afforded by the FFHA. The court’s holding was not based on any analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act.

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2 Letter from Ken Carroll to Derick Daniel (May 1, 2008)  
3 FCHR has made several attempts to seek a legislative cure, however, none have been successful.  
4 Letter from Ken Carroll to Michelle Wilson (July 10, 2013); The date in the letter, December 23, 2015, is inaccurate; FCHR’s current certification expires on January 25, 2016.
The Belletete holding has been criticized by the Attorney General of Florida, and has been rejected by the U.S. District Court for the Southern District of Florida.\(^5\) It has, however, been followed in Florida state courts, both in and outside of Florida’s fourth district. As set forth more fully below, the Belletete holding is fundamentally inconsistent with both the letter and spirit of the federal Fair Housing Act.

II. Analysis

A. Federal Statutory Language and Case Law

The ability to directly file a civil action was present in the original 1968 Fair Housing Act. See, former 42 U.S.C. §3612(a) ("The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction."). The Supreme Court, in Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979), squarely rejected an argument that administrative exhaustion was required under the Act. Of particular note, the court stated:

\[
\text{Gladstone at 103-104.}
\]

In rejecting an administrative exhaustion requirement, the court stated:

\[
\text{[The Act] provides substantial and rather specific support for the view that §§810 and 812 are available to precisely the same class of plaintiffs ... There is no evidence that Congress intended to condition access to the courts on a prior resort to the federal agency. To the contrary, the history suggests that all Title VIII complaints were to have available immediate judicial review. The alternative, administrative remedy was then offered as an option to those who desired to use it.}
\]

\[
\text{Gladstone at 105-106.}
\]

The Supreme Court concluded that the Court of Appeals correctly interpreted §§3610 and 3612 as providing alternative remedies to precisely the same class of plaintiffs. The court reasoned that this broad construction was consistent with both the language and legislative history of the Act.\(^6\)

\(^5\) In Milsap, et al. v. Cornerstone Residential Management, Inc., et al., 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on Belletete as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General argued that Belletete was wrongly decided, the court reversed itself and reinstated the FFHA claims. See, 2010 WL 427436 (S.D. Fla. 2010).

\(^6\) The legislative history of the 1968 Fair Housing Act further supports complainants’ direct access to courts without filing an administrative complaint. In describing the enforcement of the Act, Representative Celler stated: ‘In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged
In addition to Gladstone, considerable federal court precedent exists that recognizes a complainant's right to proceed directly to court without first pursuing a HUD complaint. See, e.g., Huntington Branch, NAACP v. Town of Huntington, 689 F.2d 391, 394 n.3 (2nd Cir. 1982)(citing Gladstone, the court stated "appellants sued under Section 812 of the Act, a specific alternative to Section 810 which allows plaintiffs to seek 'immediate judicial review' in a federal action."); see also, Royster v. Martin, 562 F. Supp. 623, 624 (S.D. Ohio 1983)(concludes that the complaint procedures set forth in §3610 are permissive and not mandatory and are recognized as distinct and separate and alternative remedies to the filing of the law suit in district court); Oliver v. Foster, 524 F. Supp. 927, 929 (S.D. Tex. 1981)("[Administrative and civil remedies] are independent remedies, and the administrative remedies need not be exhausted prior to the filing of a civil action in federal court."); Grim v. Glover, 338 F.Supp. 823, 825 (S.D. Ohio 1972)(holding that Congress intended the remedies provided for in §§3610 and 3612 to be separate and distinct, therefore, plaintiffs have the right to bring a suit in federal district court alleging racial discrimination before exhausting or attempting to exhaust the remedies provided for in §3610).

B. Florida Statutory Language and Case Law

As noted supra., the Florida Fair Housing Act does not expressly require the exhaustion of administrative remedies as a precondition to filing a private civil action in state court. The relevant portion of the FFHA ( "Enforcement") states:

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, without complaining to HUD, file a complaint with the commission.

Fla. Statutes § 760.34 (1) (emphasis added)

In fact, at least two provisions of the FFHA stand in direct opposition to the idea that exhaustion of administrative remedies is a statutory requirement. First, the enforcement provisions go on to state:

Whenever an action filed in court pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

Fla. Statutes § 760.34 (6)

This subsection explicitly anticipates that a complaint may be pending simultaneously in both the administrative and judicial forum. Note that this provision is also completely consistent with the federal law, in which the administrative forum is divested of jurisdiction only at such time as a trial in court actually commences ("comes to trial"). Second, the section on "Civil actions and relief" states:

discriminatory housing practice occurred ...” 114 Cong.Rec. 9560 (1968). In addition, the House Judiciary Committee Report stated: “Section 812 states what is apparently an alternative to the conciliation-then-litigation approach [of §810]: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD, file an action in the appropriate U.S. district court.” Id. at 9612 (emphasis added).
A civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court.

Fla. Statutes § 760.35 (1)

As with § 760.34(6) above, the only logical reading of this text indicates that a complaint may be pending simultaneously in both the administrative and judicial forum. Thus, on the issue of exhaustion of remedies the FFHA is, on its face, consistent with the federal Fair Housing Act. It is only the judicial holding of Belletete and its progeny that endangers the continued substantial equivalence of Florida’s law and FCHR’s continued participation in the Fair Housing Assistance Program.

Unfortunately, as noted above, the court in Belletete did not analyze the language or legislative intent of the FFHA in reaching its holding. While the holding has been rejected in federal court (see, fn. 6), it remains the law in Florida courts. The Florida Supreme Court has held that “the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court.” See, Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992).

Our research has uncovered at least two cases adopting Belletete in Florida’s Fourth District Court of Appeals, see, State v. Leisure Village, Inc., 40 Fla. L. Weekly D934 (Fla. 4th DCA April 22, 2015); Sun Harbor Homeowners’ Ass’n v. Bonura, 95 So. 3d 262, 267 (Fla. 4th DCA 2012), and we are aware of a similar ruling dismissing FFHA claims because of a failure to exhaust administrative remedies in the Eleventh Judicial Circuit, HOPE v. SPV Realty, L.C., CASE NO.: 14-32184-CA-01 (April 30, 2015). Because the Eleventh Judicial District is covered by the Third District Court of Appeals, this dismissal means that the Belletete holding has spread beyond the Fourth District Court of Appeals.

III. Conclusion

Both the plain language of the Fair Housing Act and relevant case law clearly indicate that the Act does not require administrative exhaustion prior to the filing of a private civil action. Because of the importance that Congress ascribed to allowing individuals to pursue a private civil action without having to first exhaust administrative remedies – in both the express text of the federal Fair Housing Act and in its legislative history – the judicial interpretation of the Florida statute that requires administrative exhaustion renders the Florida law fundamentally inconsistent with federal law.

The Department hereby notifies FCHR that it will take action to suspend its participation in the Fair Housing Assistance Program if the issue is not satisfactorily resolved through a statutory
amendment to the Florida Fair Housing Act on or before January 25, 2016. HUD will continue to refer complaints to FCHR in the interim. In the event the issue is not satisfactorily revised by the deadline, HUD will proceed to suspension and ultimately to withdrawal from the program under 24 C.F.R. § 115.211(b)(2) and (3).

If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at 202-402-2126 or at Joseph.A.Pelletier@hud.gov.

Sincerely,

Sara K. Pratt
Deputy Assistant Secretary for Enforcement and Programs

cc: Carlos Osegueda, FHEO Region IV Director

---

7 While the July 2013 letter from Ken Carroll indicates that a regulation may suffice, the Department believes that only a legislative amendment to the statute will be effective in resolving the issue. This position was also expressed in a March 2013 email from FCHR’s General Counsel.
Michelle Wilson, Executive Director
Florida Commission on Human Relations
4075 Esplanade Way Room 110
Tallahassee, FL 32399

Subject: Florida Fair Housing Act – Exhaustion of Administrative Remedies

Dear Ms. Wilson:

This letter follows up on recent correspondence between HUD and the Florida Commission on Human Relations with respect to legislative revisions to the Florida Fair Housing Act necessary to overcome the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.

The Department has notified FCHR that unless such legislation was enacted on or before March 12, 2016, FCHR risked suspension and withdrawal from the FHAP program. I am aware of the extensive efforts of FCHR to secure such legislation during the 2016 session of the Florida General Assembly, which were unfortunately unsuccessful. I am also aware, however, that FCHR is actively working with the appellant in a case pending in Florida’s Third District Court of Appeals that, if successful, would create a split in Florida’s intermediate appellate courts on the issue. It is my understanding that FCHR has filed an amicus brief with the Third DCA, and that oral arguments are scheduled in the very near future.

Taking all of the above into consideration, and in the absence of any intervening occurrence or event, the Department will refrain from making any decision regarding suspension and withdrawal during the pendency of the judicial proceedings. The Department values its existing partnership with the Florida Commission on Human Relations and is hopeful that the issue will be favorably resolved by the courts. If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at (202) 402-2126 or at Joseph.A.Pelletier@hud.gov.

Sincerely,

[Signature]

Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs

cc: Carlos Osegueda, FHEO Region IV Director
The Florida Senate
APPEARANCE RECORD
(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/05/2019
Meeting Date

Topic MANDATORY SENTENCES

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE
          TALLAHASSEE, FL. 32301

Phone 786.260.9283

Email cgrojales@tlibleire.org

Speaking: [ ] For [ ] Against [ ] Information

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: [ ] 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)

Meeting Date: 11/5/19

Bill Number (if applicable): 468

Topic: Mand. Sentencing

Name: Chelsea Murphy

Job Title: State Director

Address: 1965 MIDDLEBROOKS CR

Phone

Email

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: Right on Crime

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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S-001 (10/14/14)
11-05-19

Meeting Date

The Florida Senate

APPEARANCE RECORD

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

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Mandatory Sentences

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 North Gadsden Street Phone 850-488-6850

Street Tallahassee FL 32301

City State Zip 32301

Speaking: Yes ☑ For ☐ Against ☐ Information ☐ Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Public Defender Association

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

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

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

11-05-2019

Topic
Mandatory Sentences

Name
Stacy Scott

Job Title
8th Circuit Public Defender

Address
151 SW 2nd Avenue
Gainesville, FL 32601

Phone
352-338-7370

Email
scotts@PD08.org

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

11/5/2019

Meeting Date

Topic: Mandatory Sentences

Name: Matt Dunagan

Job Title: Deputy Director

Address: 2617 Mahan Drive

Tallahassee, FL 32308

Phone: 850-877-2165

Email: mdunagan@flsheriffs.org

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing: Florida Sheriffs Association

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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The Florida Senate

APPEARANCE RECORD

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

Meeting Date: 11/5/19

Bill Number (if applicable): SB 468

Topic: Mandatory Sentences

Name: Phil Archer

Job Title: State Attorney - 18th Cir.

Address: 2725 Judge Fran Jamieson

Phone: (321) 637-5575

Email

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

Representing: FPAA - Fla Prosecuting Attorneys Assoc

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/14/14)
The Florida Senate
APPEARANCE RECORD
(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date
11/05/2019

Topic
Mandatory Sentences

Name
Gary W. Hester

Job Title
Government Affairs

Address
P.O. Box 14038
Street
Tallahassee
City
FL
State
32317
Zip

Speaking:
☐ For  ☐ Against  ☐ Information

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

Representing
Florida Police Chiefs Association

Appearing at request of Chair:
☐ Yes  ☑ No

Lobbyist registered with Legislature:
☑ Yes  ☐ No

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

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

S-001 (10/14/14)
Meeting Date: 11/5/19

Bill Number (if applicable): 468

Topic: Maud Min

Name: Greg Newburn

Job Title: State Director

Address: ____________________________

Street: ____________________________

City: ____________________________

State: ____________________________

Zip: ____________________________

Phone: ____________________________

Email: ____________________________

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: FAMM

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date

Topic Judicial Discretion to Depart from Mandatory Minimums

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 W. Flagler St.

Street Miami FL 33134

City State Zip

Phone 786-363-4436

Email kgross@aclufl.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [✓] In Support [ ] Against

(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

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

APPEARANCE RECORD

Meeting Date: 11-5-19

Bill Number (if applicable): SB 468

Amendment Barcode (if applicable): 

Topic: MANDATORY SENTENCES

Name: SEX AND BUGS Clay County, FL

Job Title: SEX TOYS of Clay County FL

Address: 2908 Brandon Blvd

City: Middleburg

State: FL

Zip: 32068

Phone: 904-415-3287

Email: SEXBUGS@GMAIL.COM

Speaking: For [ ] Against [ ] Information [ ]

Waive Speaking: In Support [ ] Against [ ]

(The Chair will read this information into the record.)

Representing: Clay County

Appearing at request of Chair: Yes [X] No [ ]

Lobbyist registered with Legislature: Yes [X] 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

Meeting Date

Topic
Mandatory Sentences

Name
Ingrid Delgado

Job Title
Associate Director for Social Concerns & Respect Life

Address
261 W Park Av

City
Tallahassee

State
FL

Zip
32301

Phone

Email

Speaking: □ For □ Against □ Information

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

Representing
Florida Conference of Catholic Bishops

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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<thead>
<tr>
<th>Topic</th>
<th>Mand. Min.</th>
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</thead>
<tbody>
<tr>
<td>Name</td>
<td>Ida V. Eskamanto</td>
</tr>
<tr>
<td>Job Title</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>126 N Mills Ave</td>
</tr>
<tr>
<td></td>
<td>Orlando, FL 32807</td>
</tr>
<tr>
<td>Phone</td>
<td></td>
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<tr>
<td>Speaking:</td>
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<td>Waive Speaking:</td>
<td>□ In Support □ Against</td>
</tr>
<tr>
<td>Representing</td>
<td>New Florida Majority</td>
</tr>
<tr>
<td>Appearing at request of Chair:</td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>Lobbyist registered with Legislature:</td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

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.
I. Summary:

SB 468 authorizes a court to impose a sentence and fine “other than” the mandatory minimum for a drug trafficking offense if the court finds on the record that the offender (1) did not engage in a continuing criminal enterprise (2) did not use or threaten violence or use a weapon during the commission of the offense, and (3) did not cause death or serious bodily injury.

II. Present Situation:

Section 893.135, F.S., requires mandatory minimum prison sentences for certain drug trafficking offenses. That section provides that possession of more than certain specified amounts of cannabis, cocaine, certain narcotic opioids, sedatives, stimulants, hallucinogens, and other illicit substances constitutes “trafficking,” with increasing mandatory prison terms and fines for possession of amounts beyond certain thresholds.

For example, s. 893.135(1)(a), F.S., defines possession of more than 25 pounds of cannabis as “trafficking in cannabis;” offenders possessing more than 25 pounds but less than 2,000 pounds of cannabis are subject to a mandatory minimum 3-year prison term and $25,000 fine; offenders possessing 2,000 pounds or more, but less than 10,000 pounds of cannabis are subject to a mandatory minimum 7-year prison term and a $50,000 fine; and offenders possessing more than 10,000 pounds of cannabis are subject to a mandatory minimum 15-year prison term and $200,000 fine. Possession of “trafficking” amounts of the substances in s 893.135, F.S., is generally punishable as a first-degree felony, while certain aggravators, such as importation into the state or an intentional killing in the course of trafficking, can increase the offense to a life or capital felony.

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1 First-degree felonies are generally punishable by up to a 30-year prison sentence, with certain exceptions.
The Criminal Punishment Code

In most cases, the minimum sentence for a criminal offense is governed by the Criminal Punishment Code, as described in ss. 921.002, 921.0021, 921.0022, 921.0023, and 921.0024, F.S. The Criminal Punishment Code assigns an “offense severity level” ranging from 1-10 to non-capital felonies, with 1 (a third-degree felony) being the least severe and 10 (a life felony) being the most severe.\(^2\) Other factors, such as the nature of any victim injury, can increase an offender’s point total, and the point total can be multiplied based on the nature of an offense (i.e. drug trafficking, adult-on-minor sex offense) or on the categorization of the defendant (i.e. prison release reoffender, habitual felony offender).\(^3\) Points from the defendant’s prior record are factored into the defendant’s point total.\(^4\) For an offender scoring fewer than 44 points, the lowest permissible sentence is any non-state prison sanction.\(^5\) If the offender scores higher than 44 points, the lowest permissible sentence is calculated by subtracting 28 from the defendant’s point total and then decreasing the result by 25 percent.\(^6\) The resulting total represents the defendant’s lowest permissible sentence in months. A court may impose a sentence lower than the lowest permissible sentence only if it finds a mitigating circumstance as described in s. 921.0026, F.S.\(^7\)

Mandatory minimum sentences supersede the lowest permissible sentence under the Criminal Punishment Code: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”\(^8\)

In some cases, and offender’s conduct is governed by multiple statutes; in such cases, “a prosecutor has discretion to decide whether and how to prosecute the defendant.”\(^9\) As such, if a defendant possesses enough of a controlled substance to violate ss. 893.13 and 893.135, F.S., a prosecutor has the discretion to charge under s. 893.13, F.S., which does not require a mandatory minimum prison sentence for most offenses,\(^10\) or s. 893.135, F.S., which does.

The state’s Youthful Offender Act specifies criteria for the sentencing of youthful offenders “[i]n lieu of other criminal penalties authorized by law … .”\(^11\) A defendant sentenced as a youthful

---

\(^2\) Section 921.0023, F.S.
\(^3\) Section 921.0024(1)(a), F.S.
\(^4\) Id.
\(^5\) Id.
\(^6\) Id.
\(^7\) Section 921.0026, F.S., provides a non-exhaustive list of mitigating factors, including the fact that the “victim was an initiator, willing participant, aggressor, or provoker of the incident,” and the “offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.”
\(^8\) Fla. R. Crim. P. 3.704(d)(26).
\(^9\) State v. Gonzales, 121 So. 3d 625, 629 (Fla. 4th DCA 2013).
\(^10\) There are three exceptions. Section 893.13(1)(c)1., F.S., subjects offenders selling certain controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility to a 3-year mandatory minimum sentence Section 893.13(1)(g)1., F.S., subjects offenders manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present to a 5-year mandatory minimum sentence. Section 893.13(1)(g)2., F.S., subjects offenders manufacturing methamphetamine or phencyclidine causing a child under 16 to suffer great bodily harm to a 10-year mandatory minimum sentence.
\(^11\) Section 958.04, F.S.
offender, therefore, is not subject to the mandatory minimum sentences for drug trafficking offenses under s. 893.135, F.S.\(^\text{12}\)

**Federal Mandatory Minimum Sentences for Drug Trafficking**

“Federal drug trafficking offenders are primarily convicted of offenses under Title 21 of the United States Code.”\(^\text{13}\) Like Florida’s framework, the federal sentencing structure has different tiers of mandatory minimum sentences based on the quantity and type of controlled substance involved in the offense.\(^\text{14}\) However, the federal framework involves two tiers (compared to Florida’s three): “[w]hen certain quantity thresholds are met, a 5-year mandatory minimum penalty and a maximum term of 40 years applies, while larger amounts increase the mandatory minimum to 10 years, with a maximum of life imprisonment.”\(^\text{15}\) Under 21 U.S.C. ss. 841 and 960, the following amounts are required to trigger mandatory minimums sentences:

<table>
<thead>
<tr>
<th>Controlled substance</th>
<th>Threshold amount for 5-year minimum mandatory sentence</th>
<th>Threshold amount for 10-year minimum mandatory sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heroin</td>
<td>100 grams</td>
<td>1 kilogram</td>
</tr>
<tr>
<td>Powder Cocaine</td>
<td>500 grams</td>
<td>5 kilograms</td>
</tr>
<tr>
<td>Cocaine-Based Mixture (crack)</td>
<td>28 grams</td>
<td>280 grams</td>
</tr>
<tr>
<td>Methamphetamine (pure)</td>
<td>5 grams</td>
<td>50 grams</td>
</tr>
<tr>
<td>Methamphetamine (mixture)</td>
<td>50 grams</td>
<td>500 grams</td>
</tr>
<tr>
<td>Marijuana</td>
<td>100 kilograms</td>
<td>1,000 kilograms</td>
</tr>
</tbody>
</table>

Florida’s framework in some cases involves lower thresholds to trigger mandatory minimums. For example, the possession of 25 pounds of marijuana triggers a 3-year mandatory minimum sentence in Florida, but it would not trigger a mandatory minimum federal sentence. Additionally, the possession of 10,000 pounds of marijuana would trigger a 15-year mandatory minimum sentence in Florida, but a 10-year mandatory minimum federal sentence. Notably, regarding threshold amounts of cocaine, Florida treats cocaine and “any mixture containing cocaine” the same, imposing mandatory minimums beginning at the possession of 28 grams. Conversely, federal law differentiates between cocaine mixtures (typically “crack” cocaine) and powder cocaine, having a higher threshold for the latter.

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\(^\text{12}\) See, e.g., *Salazar v. State*, 544 So. 2d 313, 313 (Fla. 2d DCA 1989) (mandatory minimum did not apply to youthful offender, as “the penalties established in the Youthful Offender Act shall be imposed in lieu of other criminal penalties authorized by law”).


\(^\text{14}\) Id.

\(^\text{15}\) Id.
III. Effect of Proposed Changes:

This bill allows a sentencing court to impose a sentence “other than”\(^{16}\) the mandatory minimum on drug trafficking offenders if the court finds on the record that (1) the offender did not engage in a continuing criminal enterprise as defined in s. 893.20, F.S.,\(^{17}\) (2) the offender did not use or threaten violence or use a weapon during the commission of the offense, and (3) the offender did not cause a death or serious bodily injury.

The bill authorizes a sentencing court to impose a sentence other than the mandatory minimum on an offender convicted of trafficking in the following substances:

- Cannabis or cannabis plants\(^{18}\)
- Cocaine\(^{19}\)
- Morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin\(^{20}\)
- Hydrocodone, Oxycodone, Alfentanil, Carfentanil, Fentanyl, Sufentanil, or a fentanyl derivative
- Phencyclidine\(^{21}\)
- Methaqualone\(^{22}\)
- Amphetamine or methamphetamine\(^{23}\)
- Flunitrazepam\(^{24}\)
- Gamma-butyrolactone (GBL)\(^{25}\)
- 1,4-Butanediol\(^{26}\)
- Substituted phenycyclohexylamine, substituted cathinone, substituted phenethylamine\(^{27}\)
- Lysergic acid diethylamide (LSD)\(^{28}\)

---

\(^{16}\) Under the broadest reading of this language, a sentence exceeding the statutory maximum could also be permitted (as such a sentence would be one “other than” the mandatory minimum). While courts likely would not engage in such an interpretation, more specific language (such as “less than”) seems more consistent with the Legislature’s intent.

\(^{17}\) Under s. 893.20, F.S., a person is guilty of engaging in a continuing criminal enterprise if he or she “commits three or more felonies under [chapter 893] in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts . . . .”

\(^{18}\) Section 893.135(1)(a), F.S.
\(^{19}\) Section 893.135(1)(b), F.S.
\(^{20}\) Section 893.135(1)(c), F.S.
\(^{22}\) Section 893.135(1)(e), F.S.; “Methaqualone is a sedative, hypnotic agent that was used for insomnia, but was taken off of the market, in the U.S., in 1983 due to its high risk of abuse.” Methaqualone, PubChem, U.S. National Library of Medicine, [https://pubchem.ncbi.nlm.nih.gov/compound/6292](https://pubchem.ncbi.nlm.nih.gov/compound/6292) (last visited October 31, 2019).
\(^{23}\) Section 893.135(1)(f), F.S.
\(^{24}\) Section 893.135(1)(g), F.S.; “Some reports indicate that it is used as a date rape drug and suggest that it may precipitate violent behavior. The United States Government has banned the importation of this drug.” Flunitrazepam, PubChem, U.S. National Library of Medicine, [https://pubchem.ncbi.nlm.nih.gov/compound/3380](https://pubchem.ncbi.nlm.nih.gov/compound/3380) (last visited October 31, 2019).
\(^{25}\) Section 893.135(1)(h), F.S.; GBL is commercial solvent.
\(^{26}\) Section 893.135(1)(j), F.S.
\(^{27}\) Section 893.135(1)(k), F.S.
\(^{28}\) Section 893.135(1)(l), F.S.
• Synthetic cannabinoids\textsuperscript{29}
• N-benzyl phenethylamines\textsuperscript{30}

Because the lowest permissible sentence under the Criminal Punishment Code Scoresheet is distinct from a “mandatory minimum sentence,”\textsuperscript{31} the bill does not grant a court any additional authority to deviate from the lowest permissible Criminal Punishment Code Scoresheet sentence.\textsuperscript{32}

Section 775.084, F.S., which is not amended by the bill, requires “mandatory minimum” prison terms for “habitual felony offenders.”\textsuperscript{33} An offender convicted of drug trafficking in violation of s. 893.135, F.S., would still be subject to certain mandatory minimum sentences if he or she meets the definition of a “habitual felony offender.”

The effective date of the bill is July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

\textsuperscript{29} Section 893.135(1)(m), F.S., synthetic cannabinoids do not derive their psychoactive effects through THC, but rather are “cannabinoid receptor agonists” that act on various brain receptors in a similar manner to cannabinoids.

\textsuperscript{30} Section 893.135(1)(n), F.S.

\textsuperscript{31} See Fla. R. Crim. P 3.704(d)(26) (differentiating between a mandatory minimum sentence and the lowest permissible sentence under the Criminal Punishment Code).

\textsuperscript{32} Section 921.0026, F.S., authorizes a court to depart downward from the lowest permissible sentence under the Criminal Punishment Code Scoresheet based on a non-exhaustive list of mitigating factors described in that section.

\textsuperscript{33} Habitual felony offenders are defendants who have been convicted of two or more prior felonies, or whose conduct meets certain criteria: the offense was committed while the offender was serving a prison sentence or within 5 years after release from a prison sentence, the felony is not simple possession under s. 893.13, F.S., and any of the qualifying felonies were not pardoned or set aside in a postconviction proceeding. Section 775.084(1)(a), F.S.
V. Fiscal Impact Statement:

A. Tax/Fee Issues:
None.

B. Private Sector Impact:
None.

C. Government Sector Impact:

The 2019 Criminal Justice Impact Conference estimated that allowing a court to sentence a drug trafficking offender to a sentence other than the mandatory minimum would have a “negative significant” prison bed impact (a decrease of more than 25 prison beds, where each bed requires an estimated $68,710 in annual capital costs) in each of the next 5 fiscal years.\(^{34}\)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 893.135, F.S., requires life sentences for offenders who possesses 150 or more kilograms of cocaine, 30 or more kilograms of certain opioids, or 30 kilograms or more of flunitrazepam.\(^{35}\) The statute says these offenders “shall be punished by life imprisonment,” but does not use the words “mandatory minimum.” If the Legislature intends to allow a court to impose a sentence less than life imprisonment for qualifying offenses, it may wish to add clarifying language.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.135 and 893.03, F.S.

IX. Additional Information:

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

None.

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\(^{35}\) Section 893.135(1)(b)2., (c)5., and (g)2., 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.
By Senator Brandes

A bill to be entitled
An act relating to mandatory sentences; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; amending s. 893.03, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—
(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:
(a) The person did not engage in a continuing criminal enterprise as defined in s. 893.20(1).
(b) The person did not use or threaten violence or use a weapon during the commission of the crime.
(c) The person did not cause a death or serious bodily injury.

Section 2. Paragraph (c) of subsection (3) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled “Excluded Substances”; 21 C.F.R. s. 1308.24, styled “Exempt Chemical Preparations”; 21 C.F.R. s. 1308.32, styled “Exempt Prescription Products”; or 21 C.F.R. s. 1308.34, styled “Exempt Anabolic Steroid Products.”

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:
(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:
1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.8 grams of codeine per 100 milliliters
or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(7).

Section 3. This act shall take effect July 1, 2020.
To: Senator David Simmons  
   Committee on Judiciary

Subject: Committee Agenda Request

Date: October 15, 2019

I respectfully request that Senate Bill #468, relating to Mandatory Sentences, be placed on the:

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

Senator Jeff Brandes  
Florida Senate, District 24
Meeting Date: 11/5/19

Topic: Housing Discrimination

Name: Pamela Burch Fort

Job Title:

Address: 104 S. Monroe Street

City: Tallahassee
State: FL
Zip: 32301

Phone: 850-425-1344
Email: Teglobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Florida State Conference of NAACP

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)

Meeting Date: 11/5/19

Bill Number (if applicable):

Amendment Barcode (if applicable):

Topic: Housing Discrimination

Name: Alice Vickers

Job Title: Attorney

Address: 623 Beard St.

Fayetteville, NC 32303

City: State: Zip: 32303 Phone: 850-557-3121 Email: alice.vickers@flasp.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing: Florida Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

Meeting Date: 11/15/19

Bill Number (if applicable): 374

Topic: Housing Discrimination

Name: Edward G. Labrador, Esq

Job Title: Legislative Counsel

Address: 100 S. Andrews Ave, Main Library 8th FL

Phone: 954-826-1155

Email: elabrador@broward.org

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing: Broward County Bd. of County Commissioners

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
I. Summary:

SJR 176 limits any amendment to the Constitution proposed by the Constitution Revision Commission to “one subject and matter connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular revision of the entire Constitution.

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Constitution Revision Commission convenes in 2037, and thus, it would be the first Commission to be governed by the amendment.

II. Present Situation:

Overview

The Florida Constitution requires that a Constitution Revision Commission be established every 20 years and that it have the authority to propose a revision of all or any part of the Florida Constitution. Accordingly, a Constitution Revision Commission may propose single-subject amendments, multi-subject amendments, or a revision of the entire Constitution.

Context – Proposed Amendments that Appeared on the 2018 General Election Ballot

Seven of the amendments on the 2018 General Election ballot were proposed by the Commission. And at least two of the Commission-proposed amendments were regarded by many as including two or more changes that were substantially unrelated; in other words, each of these
amendments were considered by many to involve the “bundling” of multiple subjects. Accordingly, voters who wanted to vote for only one of the changes set forth in a given multi-subject amendment may have been frustrated by having to choose between voting for a change they did not desire (because it was paired with one they wanted) or having to vote against a change they desired (because it was paired with a change they did not like).

Examples of Commission-proposed amendments that many regarded as multi-subject were amendment 9 and amendment 6. Amendment 9 combined a ban on oil-drilling in state seawaters with a ban on “vaping” in indoor workplaces. Amendment 6 combined what many regarded as three different subjects: a crime-victim-rights proposal, a prohibition on judges deferring to agencies’ interpretation of statutes or rules, and a 5-year increase in the mandatory retirement age for judges.

Constitution Revision Commission

Origin

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions that were proposed during a Special Session of the Legislature. One of the resolutions included a provision requiring a Constitution Revision Commission to convene once every 20 years, beginning in 1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.

Members

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). The Governor must appoint a chair from among the 37 members.

Task, Procedures, and Authority

The Commission’s task is to examine the Constitution and decide which, if any, amendments to submit for voter approval. The amendments must be submitted to the Secretary of State at least 180 days before the next general election. In turn, the amendments must be submitted to the voters for approval. If the amendments are approved by a majority of voters, they become part of the Florida Constitution.

2 See Brendan Rivers and News Service of Florida Staff, Bill Filed to Ban Bundled Amendments from Constitution Revision Commission, WJCT FIRST COAST CONNECT (Nov. 26, 2018), http://news.wjct.org/post/bill-filed-ban-bundled-amendments-constitution-revision-commission; see generally, Editorial Board, Florida’s constitutional amendments: Vote ‘yes’ on 4 and 11, ‘no’ on rest, TALLAHASSEE DEMOCRAT (Oct. 7, 2018), https://www.tallahassee.com/story/opinion/editorials/2018/10/07/floridas-amendments-yes-4-and-11-no-rest-our-opinion/1494375002/ (arguing that amendment 6 and amendment 9 each included a proposal worthy of approval, but should be voted against on account of at least one unworthy proposal in each); Kelley H. Armitage, Constitution Revision Commissions Avoid Logrolling, Don’t They?, 72 FLA. B.J. 62 (Nov. 1998) (arguing that the Constitution Revision Commission does not have sufficient safeguards against logrolling).
4 FLA. CONST. art. XI, s. 2.
5 FLA. CONST. art. XI, s. 2.
voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.\footnote{FLA. CONST. art. XI, s. 5.}

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and “hold [an unspecified number of] public hearings.”\footnote{FLA. CONST. art. XI, s. 2.}

The Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. Only amendments that originate by way of citizen initiative are limited to one subject. Accordingly, as the Florida Supreme Court stated in a case challenging a 2018 Commission-proposed amendment, the Constitution Revision Commission need not limit its proposals to one subject:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the CRC are not bound by the single-subject rule limiting amendments to one subject. . . . Moreover, the Florida Constitution expressly authorizes bundling, as it gives the CRC authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.\footnote{Detzner v. Anstead, 256 So. 3d 820, 823-24 (Fla. 2018) (citation omitted); see also, County of Volusia v. Detzner, 253 So. 3d 507, 512 (Fla. 2018) (“Appellants have conceded, however, that CRC proposals are not bound by the single-subject requirement . . . .”); Charter Review Commission of Orange Cty. v. Scott, 647 So. 2d 835, 837 (Fla. 1994) (“Only proposals originating through a petition initiative are subject to the single-subject rule.”).}

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in Fine v. Firestone, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.\footnote{Fine v. Firestone, 448 So. 2d 984, 994 (Fla. 1984).}
Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”\textsuperscript{10} Making a similar point in a later case, the Florida Supreme Court stated that the single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.\textsuperscript{11}

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Constitution Revision Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”\textsuperscript{12} This is not true, the Court noted, of citizen initiatives.\textsuperscript{13}

\textbf{What “One Subject” Means}

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”\textsuperscript{14} In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”\textsuperscript{15} Moreover, the single-subject limitation prohibits an amendment from

\begin{itemize}
\item (1) engaging in “logrolling” or
\item (2) “substantially altering or performing the functions of multiple aspects of government.” . . . The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.\textsuperscript{16}
\end{itemize}

And although “no single proposal can substantially alter or perform the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “affect several branches of government.”\textsuperscript{17} However, “how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal.”\textsuperscript{18}

\begin{flushleft}
\textsuperscript{10} \textit{Id.} at 832 (quoting \textit{Adams v. Gunter}, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).
\textsuperscript{11} \textit{In re Advisory Op. to the Att’y Gen.—Save Our Everglades}, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting \textit{Fine v. Firestone}, 448 So. 2d 984, 988 (Fla. 1984)).
\textsuperscript{12} \textit{Id.} at 1339.
\textsuperscript{13} \textit{Id.}
\textsuperscript{14} \textit{Evans v. Firestone}, 457 So. 2d 1351, 1354 (Fla. 1984).
\textsuperscript{15} \textit{Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)}, 188 So. 3d 822, 828 (Fla. 2016).
\textsuperscript{16} \textit{Id.} at 827-28 (citations omitted).
\textsuperscript{17} \textit{In re Advisory Op. to the Att’y Gen.—Save Our Everglades}, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).
\textsuperscript{18} \textit{Fine v. Firestone}, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).
\end{flushleft}
Below, a brief look at three Supreme Court opinions shows how the Court has applied these legal principles in deciding whether a particular citizen initiative had embraced more than one subject.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. And the Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” and were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were, “naturally related and connected to the amendment’s oneness of purpose.” The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.” The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.” The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the “management, construction, and operation of water storage and sewer systems.” Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects. But the Court did so without specifying that the

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20 Id. at 828.
21 Id.
22 In re Advisory Op. to the Att’y Gen.—Save Our Everglades, 636 So. 2d 1336, 1337 (Fla. 1994).
23 Id. at 1340.
24 Id.
25 Id.
26 Fine v. Firestone, 448 So. 2d 984 (Fla. 1984).
subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.\(^{27}\)

**Joint Resolution**

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.\(^ {28}\) Like a bill, it may begin in either house of the Legislature.

To pass Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.\(^ {29}\) Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.\(^ {30}\)

**III. Effect of Proposed Changes:**

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Constitution Revision Commission be limited to “one subject and matter directly connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular, comprehensive revision of the Constitution.

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.\(^ {31}\)

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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\(^ {27}\) Id. at 992 (Fla. 1984).
\(^ {28}\) Fla. Const. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.
\(^ {29}\) Fla. Const. art. XI, s. 1.
\(^ {30}\) Fla. Const. art XI, s. 5.
\(^ {31}\) See e.g., State v. Hackley, 95 So. 3d 92, 95 (Fla. 2012); State v. Hears, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).
B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish[ ] twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be $29,737.60, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election.
by either joint resolution of the Florida Legislature or by the initiative petition process.\textsuperscript{32}

\textbf{VI. Technical Deficiencies:}

None.

\textbf{VII. Related Issues:}

None.

\textbf{VIII. Statutes Affected:}

This resolution amends Article XI, section 2 of the Florida Constitution.

\textbf{IX. Additional Information:}

\begin{itemize}
  \item A. Committee Substitute – Statement of Changes:
    
    (Summarizing differences between the Committee Substitute and the prior version of the bill.)

    None.

  \item B. Amendments:

    None.
\end{itemize}

\footnote{Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Oct. 30, 2019) (on file with the Senate Committee on Judiciary).}

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

Senate Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Constitution Revision Commission be limited to a single subject.

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

That the following amendment to Section 2 of Article XI 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 XI
AMENDMENTS

SECTION 2. Revision commission.—
(a) Within thirty days before the convening of the 2037 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
(4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.
(b) The governor shall designate one member of the commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

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

(d) Any proposal of a revision of this constitution, or any part thereof, filed by the constitution revision commission with the custodian of state records must embrace but one subject and matter directly connected therewith.

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

CONSTITUTIONAL AMENDMENT
ARTICLE XI, SECTION 2
ESTABLISHING SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REVISION COMMISSION PROPOSALS.—Proposing an amendment to the State Constitution to require that any proposal of a revision of the State Constitution, or any part thereof, filed by the Constitution Revision Commission with the custodian of state records for placement on the ballot be limited to a single subject and matter directly connected to such subject.
October 10, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SJR 176 Single-Subject Limitation for Constitutional Revision Commission Proposals on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

Senator José Javier Rodríguez
District 37

CC:
Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons
Adam,

Since the text for SJR 176 & SJR 396 is identical from 2019, so would the cost estimate, The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish* twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be $58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.

*The requirement to provide these publications in Spanish stems from Section 203 of the federal Voting Rights act.

Let me know if you have any questions!

Thank you!

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)
The Florida Senate

APPEARANCE RECORD

11/05/2019

Meeting Date

SB 176

Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REVISION

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Street

TALLAHASSEE FL 32301

City State Zip

Phone 786.260.9283

Email Cgroatales@belibre.org

Speaking: Box For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

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

Meeting Date

Name
SEX AND BUDS Clay County PHONES

Job Title
SEX 70Y STORIES OF CLAY COUNTY

Address
Street
City
State
Zip

Phone
904/415-3272

Email
SEX-BUDS@FCC.COM

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

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 (10/14/14)
I. **Summary:**

SJR 396 limits any amendment to the Constitution proposed by the Taxation and Budget Reform Commission to “one subject and matter connected therewith.”

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Taxation and Budget Reform Commission convenes in 2027, and thus it would be the first Commission to be governed by the amendment.

II. **Present Situation:**

**Overview**

The Florida Constitution requires that a Taxation and Budget Reform Commission be established once every 20 years and that it have the authority to propose a revision of the “Constitution or any part of it dealing with taxation or the state budgetary process.” Although the Commission’s proposals are limited to this area of law, each proposal may nonetheless embrace multiple subjects within this area.
Taxation and Budget Reform Commission

Origin
In 1988, this state’s voters approved a constitutional amendment that was proposed by the Legislature to create the Taxation and Budget Reform Commission.\(^1\) The amendment specified that the Commission must convene for the first time in 2007, and once every 20 years afterward.\(^2\)

Members
The Constitution requires that the Commission be comprised of 25 voting members and 4 non-voting “ex-officio” members. The 25 voting members must be appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). The 4 non-voting members must be chosen by the Speaker (2) and the Senate President (2) from the members of their respective houses; one of the two choices from each house must be from the minority party. At its initial meeting, the commissioners must elect a commissioner who is not also a legislator to serve as chair.

Task, Procedures, and Authority
The Commission is tasked with examining this state’s budgetary process, revenue needs, and expenditure processes.\(^3\) Upon examining these matters, the Commission must issue a report of the results of its review, and propose any recommended statutory changes to the Legislature. The Commission may also propose “a revision of this constitution or any part of it dealing with taxation and the state budgetary process.”\(^4\)

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. It says only that the Commission must elect a chair at its initial meeting, convene for further meetings at the call of the chair, adopt rules of procedure, and “hold [an unspecified number of] public hearings as it deems necessary to carry out its responsibilities.”\(^5\)

The Single-Subject Requirement
Amendments that are Limited to One Subject
The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. As the Florida Supreme Court has repeatedly stated, “the citizen initiative is the only method that is constrained by the single-subject requirement.”\(^6\)

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\(^1\) See HJR 1616 (1988).
\(^2\) Id.
\(^3\) Fla. Const., art. XI, s. 6(d).
\(^4\) Fla. Const., art XI, s. 6(e).
\(^5\) Fla. Const. art. XI, s. 2.
\(^6\) Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ., 778 So. 2d 888 (Fla. 2000); see also, Charter Review Commission of Orange Cty. v. Scott, 647 So. 2d 835, 837 (Fla. 1994) (“Only proposals originating through a petition initiative are subject to the single-subject rule.”).
**Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives**

The Florida Supreme Court has also repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.\(^7\)

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”\(^8\) Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.\(^9\)

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Taxation and Budget Reform Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”\(^10\) This is not true, the Court noted, of citizen initiatives.\(^11\)

**What “One Subject” Means**

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”\(^12\) In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”\(^13\) Moreover, the single-subject limitation prohibits an amendment from

(1) engaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” . . . The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions,

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\(^7\) *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

\(^8\) *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

\(^9\) *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

\(^10\) See *Id.* at 1339.

\(^11\) *Id.*

\(^12\) *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

some of which electors might wish to support, in order to get an otherwise disfavored provision passed.  

And although “no single proposal can substantially alter or perform the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “affect several branches of government.” However, “how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal.”

A brief look at three Supreme Court opinions will help illuminate the Court’s understanding of these legal principles, and therefore of what “one subject” means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. And the Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” and were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were “naturally related and connected to the amendment’s oneness of purpose.” The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.” The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.” The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the

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14 Id. at 827-28 (citations omitted).
15 In re Advisory Op. to the Att’y Gen.—Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).
16 Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).
18 Id. at 828.
19 Id.
20 In re Advisory Op. to the Att’y Gen.—Save Our Everglades, 636 So. 2d 1336, 1337 (Fla. 1994).
21 Id. at 1340.
“management, construction, and operation of water storage and sewer systems.”\textsuperscript{22} Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.\textsuperscript{23}

In yet another opinion, issued in \textit{Fine v. Firestone}, the Court disapproved of a proposed amendment that contained three subjects.\textsuperscript{24} But the Court did so without specifying that the subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.\textsuperscript{25}

\textbf{Joint Resolution}

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.\textsuperscript{26} Like a bill, it may begin in either house of the Legislature.

To pass the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.\textsuperscript{27} Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.\textsuperscript{28}

\textbf{III. Effect of Proposed Changes:}

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Taxation and Budget Reform Commission be limited to “one subject and matter connected therewith.”

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.\textsuperscript{29}

\textsuperscript{22} \textit{Id.}

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Fine v. Firestone}, 448 So. 2d 984 (Fla. 1984).

\textsuperscript{25} \textit{Id.} at 992 (Fla. 1984).

\textsuperscript{26} FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

\textsuperscript{27} FLA. CONST. art. XI, s. 1.

\textsuperscript{28} FLA. CONST. art XI, s. 5.

\textsuperscript{29} See \textit{e.g.}, \textit{State v. Hackley}, 95 So. 3d 92, 95 (Fla. 2012); \textit{State v. Hearns}, 961 So. 2d 211, 217 (Fla. 2007) ("We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.").
IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:
   None.

B. Public Records/Open Meetings Issues:
   None.

C. Trust Funds Restrictions:
   None.

D. State Tax or Fee Increases:
   None.

E. Other Constitutional Issues:
   None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   None.

B. Private Sector Impact:
   None.

C. Government Sector Impact:

   The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

   The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish[ ] twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.
Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be $58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.\(^{30}\)

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This resolution amends Article XI, section 6 of the Florida Constitution.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

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

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\(^{30}\) Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Oct. 30, 2019) (on file with the Senate Committee on Judiciary).
Florida Senate - 2020  SJR 396

By Senator Rodriguez

A joint resolution proposing an amendment to Section 6 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject.

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

That the following amendment to Section 6 of Article XI 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 XI

AMENDMENTS

SECTION 6. Taxation and budget reform commission.—
(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:
(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.
(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.
(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

CODING: Words stricken are deletions; words underlined are additions.
strategic decisionmaking process.

(e) The commission shall hold public hearings as it deems
necessary to carry out its responsibilities under this section.
The commission shall issue a report of the results of the review
carried out, and propose to the legislature any recommended
statutory changes related to the taxation or budgetary laws of
the state. Not later than one hundred eighty days prior to the
general election in the second year following the year in which
the commission is established, the commission shall file with
the custodian of state records its proposal, if any, of a
revision of this constitution or any part of it dealing with
taxation or the state budgetary process. Any proposal of a
revision of this constitution, or any part thereof, filed by the
commission with the custodian of state records must embrace but
one subject and matter directly connected therewith.

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

CONSTITUTIONAL AMENDMENT
ARTICLE XI, SECTION 6
ESTABLISHING SINGLE-SUBJECT LIMITATION FOR TAXATION AND
BUDGET REFORM COMMISSION PROPOSALS.—Proposing an amendment to
the State Constitution to require that any proposal of a
revision to the State Constitution, or any part thereof, filed
by the Taxation and Budget Reform Commission with the custodian
of state records for placement on the ballot be limited to a
single subject and matter directly connected to such subject.
October 18, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100

Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SJR 396 Single-subject Limitation for Taxation and Budget Reform Commission on the agenda of the Committee on Judiciary at your earliest convenience. Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

[Signature]
Senator José Javier Rodríguez
District 37

CC:
Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons
Adam,

Since the text for SJR 176 & SJR 396 is identical from 2019, so would the cost estimate, The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish* twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.

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*The requirement to provide these publications in Spanish stems from Section 203 of the federal Voting Rights act.

Let me know if you have any questions!

Thank you!

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)

Brittany,

If you could provide me with the cost of advertising SJR 396, I’d appreciate it. This SJR is identical to SJR 690 (2019).

If I could get your estimate by Thursday, that’d be great.
### The Florida Senate

**APPEARANCE RECORD**

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

<table>
<thead>
<tr>
<th>Meeting Date</th>
<th>SB 396</th>
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<tbody>
<tr>
<td>11/05/2019</td>
<td>Bill Number (if applicable)</td>
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<th>Topic</th>
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<table>
<thead>
<tr>
<th>Name</th>
<th>CESAR GRAJALES</th>
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<table>
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<tr>
<th>Job Title</th>
<th>COALITIONS DIRECTOR</th>
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<tr>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
</tr>
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<tbody>
<tr>
<td>200 W COLLEGE AVE</td>
<td>786. 260. 9883</td>
<td><a href="mailto:cajo-sales@delibre.org">cajo-sales@delibre.org</a></td>
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<tr>
<th>Speaking: For</th>
<th>Against</th>
<th>Information</th>
<th>Waive Speaking:</th>
<th>In Support</th>
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<tr>
<th>Representing</th>
<th>AMERICANS FOR PROSPERITY</th>
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<tr>
<th>Appearing at request of Chair: Yes</th>
<th>No</th>
<th>Lobbyist registered with Legislature: Yes</th>
<th>No</th>
</tr>
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</table>

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.
Meeting called to order by Chair Simmons
Roll call by Administrative Assistant Joyce Butler
Quorum present
Comments from Chair Simmons
Introduction of Tab 1, SB 160 by Chair Simmons
Explanation of SB 160, Peer-to-Peer Support for First Responders by Senator Perry
Comments from Chair Simmons
Question from Senator Gibson
Response from Senator Perry
Follow-up question from Senator Gibson
Response from Senator Perry
Question from Senator Rodriguez
Response from Senator Perry
Amendment Barcode No. 191422 withdrawn
Speaker Wayne Bernoska, President, Florida Professional Firefighters
Question from Senator Gibson
Response from Mr. Bernoska
Question from Senator Stargel
Response from Mr. Bernoska
Follow-up question from Senator Stargel
Response from Mr. Bernoska
Follow-up question from Senator Stargel
Response from Mr. Bernoska
Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support
Speaker George Wallace in support
Question from Senator Gibson
Response from Mr. Wallace
Question from Chair Simmons
Response from Mr. Wallace
Meredith Brock Stanfield, Director of Legislative & Cabinet Affairs, Department of Financial Services waives in support
Speaker Steve Zona, President FOP Lodge 530, Florida FOP
Question from Chair Simmons
Response from Mr. Zona
Speaker Mick McHale, Florida PBA
Comments from Chair Simmons
Comments from Senator Baxley
Senator Gibson in debate
Comments from Senator Perry
CS/SB 160 temporarily postponed
Introduction of Tab 3, SB 248 by Chair Simmons
Explanation of SB 248, Public Records/County Attorneys and Assistant County
Attorneys by Senator Hooper
2:44:19 PM Comments from Chair Simmons
2:44:34 PM Laura Youmans, Legislative Counsel, Florida Association of Counties waives in support
2:44:41 PM Edward Labrador, Legislative Counsel, Broward County Board of County Commissioners waives in support
2:44:52 PM Ralph Lair, Intergovernmental Affairs Officer, Pasco County waives in support
2:45:03 PM Cari Roth, Charlotte County waives in support
2:45:33 PM Speaker James Otto, Sex & Buds Clay County & Hotels
2:46:40 PM Closure waived
2:46:42 PM Roll call on SB 248 by Administrative Assistant Joyce Butler
2:46:55 PM SB 248 reported favorably
2:47:08 PM Introduction of Tab 2, SB 162 by Chair Simmons
2:47:37 PM Explanation of SB 162, Public Records by Senator Perry
2:48:12 PM Comments from Chair
2:48:25 PM Cesar Grajaies, Coalitions Director, Americans for Prosperity waives in support
2:49:52 PM James Otto, Sex, Buds, Clay County FL Hotels
2:50:36 PM Closure waived
2:50:44 PM Roll call on SB 162 by Administrative Assistant Joyce Butler
2:50:49 PM SB 162 reported favorably
2:50:57 PM Introduction of Tab 4, SB 344 by Chair Simmons
2:51:12 PM Explanation of SB 344, Courts by Senator Bradley
2:53:00 PM Comments from Chair Simmons
2:54:03 PM Explanation of Amendment Barcode No. 386350 by Senator Bradley
2:54:30 PM Amendment Barcode No. 386350 adopted
2:55:33 PM Zayne Smith, Associate State Director, AARP waives in support
2:55:40 PM Catherine Ackerman, Executive Director, Florida Public Guardian Coalition waives in support
2:56:46 PM James Otto, Sex & Buds Clay County FL Hotels
2:57:20 PM Senator Baxley in debate
2:58:14 PM Senator Bradley in closure
2:59:23 PM Roll call on CS/SB 344 by Administrative Assistant Joyce Butler
3:00:24 PM CS/SB 344 reported favorably
3:00:37 PM Introduction of Tab 5, SB 358 by Chair Simmons
3:00:53 PM Explanation of SB 358, Decedents' Property by Senator Berman
3:03:33 PM Amendment Barcode No. 665556 introduced
3:03:54 PM Explanation of Amendment by Senator Berman
3:04:32 PM Sarah Butters, RPPTL - FL Bar waives in support of Amendment
3:05:02 PM Amendment Barcode No. 665556 adopted
3:05:45 PM Closure waived
3:05:50 PM Roll call by Administrative Assistant Joyce Butler
3:06:00 PM CS/SB 358 reported favorably
3:06:22 PM Introduction of Tab 6, TP'd until Senator Rouson arrives
3:06:50 PM Introduction of Tab 7, SB 468 by Chair Simmons
3:07:04 PM Explanation of SB 468, Mandatory Sentences by Senator Brandes
3:07:40 PM Comments from Chair Simmons
3:07:51 PM Question from Chair Stargel
3:07:57 PM Response from Senator Brandes
3:08:25 PM Cesar Grajaies, Coalitions Director, Americans for Prosperity waives in support
3:08:51 PM Chelsea Murphy, State Director, Right on Crime waives in support
3:09:08 PM Speaker Nancy Daniels, Legislative Consultant, Florida Public Defender Association in support
3:12:15 PM Speaker Stacy Scott, 8th Circuit Public Defender in support
3:15:46 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in opposition
3:16:01 PM Phil Archer, State Attorney, 18th Circuit, Florida Prosecuting Attorneys Association waives in opposition
3:16:25 PM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in opposition
3:16:41 PM Greg Newburn, State Director, FAMM waives in support
3:17:04 PM Kara Gross, Legislative Director & Senior Policy Counsel, ACLU of Florida waives in support
3:17:47 PM Speaker James Otto, Sex & Buds Clay County FL Hotels
3:20:10 PM Ingrid Delgado, Associate Director for Social Concerns & Respect Life, Florida Conference of Catholic Bishops waives in support
3:20:24 PM Ida V. Eskamani, New Florida Majority waives in support
3:20:52 PM Comments from Chair Simmons
3:21:53 PM Senator Stargel in debate
3:22:47 PM Senator Hutson in debate
3:23:27 PM Senator Baxley in debate
3:26:29 PM Senator Brandes in closure
3:28:12 PM Roll call on SB 468 by Administrative Assistant Joyce Butler
3:29:11 PM SB 468 reported favorably
3:29:28 PM Introduction of Tab 6, SB 374 by Chair Simmons
3:31:30 PM Comments from Chair Simmons
3:31:47 PM Pamela Burch Fort, Florida State Conference of NAACP waives in support
3:32:06 PM Alice Vickers, Florida Alliance for Consumer Protection waives in support
3:32:58 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support
3:33:05 PM Speaker James Otto, Sex & Buds Clay County FL Hotels
3:33:10 PM Senator Baxley in debate
3:33:29 PM Closure waived
3:33:53 PM Roll call by Administrative Assistant Joyce Butler
3:34:19 PM SB 374 reported favorably
3:35:49 PM Introduction of Tab 8, SJR 176 by Chair Simmons
3:37:29 PM Comments from Chair Simmons
3:37:33 PM Senator Hutson in debate
3:38:14 PM Roll call by Administrative Assistant Joyce Butler
3:38:21 PM SJR 176 reported favorably
3:39:21 PM Comments from Chair Simmons
3:39:40 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support
3:39:57 PM Roll call by Administrative Assistant Joyce Butler
3:40:05 PM SJR 396 reported favorably
3:40:20 PM Comments from Chair Simmons
3:40:24 PM Senator Hutson moves to adjourn, meeting adjourned