

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, March 22, 2021**TIME:** 3:30—6:00 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Brandes, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, Rouson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 26 Cruz (Similar CS/H 6511)	Relief of the Estate of Crystle Marie Galloway/Hillsborough County Board of County Commissioners; Providing for the relief of the Estate of Crystle Marie Galloway by the Hillsborough County Board of County Commissioners; providing for an appropriation to compensate the estate for injuries sustained by Crystle Marie Galloway and her survivors as a result of the negligence of employees of the Hillsborough County Board of County Commissioners, etc. SM JU 03/22/2021 Fav/CS HP RC	Fav/CS Yeas 11 Nays 0
2	SB 398 Rodriguez (Similar CS/H 6503)	Relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County; Providing for the relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County; providing for an appropriation to compensate the Estate of Emilio Jesus Vizcaino-Aday for injuries and damages sustained by Emilio Jesus Vizcaino-Aday and his survivors as a result of the negligence of Miami-Dade County, etc. SM JU 03/22/2021 Fav/CS CJ RC	Fav/CS Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 22, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 382 Hooper (Identical H 31)	Clerks of the Court; Specifying the amount of charges for certain services rendered by, and instruments filed with, the clerk of the circuit court which are not court records; revising the distribution of revenue from filing fees from the institution of certain appellate proceedings; requiring the clerks of the court to submit requests for reimbursement for jury-related costs to the Florida Clerks of Court Operations Corporation within specified timeframes, etc. JU 03/22/2021 Favorable ACJ AP	Favorable Yeas 11 Nays 0
4	SB 1070 Berman (Identical H 609)	Estates and Trusts; Requiring the court to allow an officer to elect to post and maintain a certain bond; providing that certain provisions of a will are void upon dissolution of marriage; creating the "Florida Uniform Directed Trust Act"; specifying that trustees and trust directors do not have a duty to monitor, inform, or advise specified persons under certain circumstances; creating the "Community Property Trust Act"; providing that certain property held in a community property trust qualifies as homestead property, etc. JU 03/22/2021 Fav/CS CA RC	Fav/CS Yeas 11 Nays 0
5	SB 1108 Diaz (Similar CS/H 507)	Education; Authorizing the Department of Education to hold patents, copyrights, trademarks, and service marks; requiring certain students to take a specified assessment relating to civic literacy; requiring certain postsecondary students to complete a civic literacy course and pass a specified assessment to demonstrate competency in civic literacy; requiring school districts to provide the SAT or ACT to grade 11 students beginning in a specified school year; revising the tests that are included under test administration and security rules, etc. JU 03/22/2021 Fav/CS ED AP	Fav/CS Yeas 11 Nays 0
6	SB 1498 Pizzo	Renaming the Criminal Punishment Code; Renaming the Criminal Punishment Code as the Criminal Public Safety Code; revising a principle of the Criminal Public Safety Code, etc. CJ 03/09/2021 Favorable JU 03/22/2021 Favorable RC	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 22, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1532 Children, Families, and Elder Affairs / Book (Similar CS/H 1089)	Child Support; Revising requirements for child support depositories in Title IV-D cases; requiring the depositories to transmit case data through and set up appropriate payment accounts in the Clerk of the Court Child Support Enforcement Collection System upon certain notice from the Department of Revenue; prohibiting the treatment of incarceration as voluntary unemployment for purposes of establishing or modifying child support orders, with exceptions; authorizing the department to include confidential and exempt information in unencrypted electronic mail communications with parents, caregivers, or other authorized persons under certain circumstances, with exceptions, etc. CF 03/09/2021 Fav/CS JU 03/22/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
8	SB 1876 Albritton (Identical H 421)	Governmental Actions Affecting Private Property Rights; Revising notice of claim requirements for property owners; authorizing property owners to bring actions to declare prohibited exactions invalid; providing for resolution of disputes concerning comprehensive plan amendments under the Florida Land Use and Environmental Dispute Resolution Act; requiring the governmental entity's conduct in dispute resolution to be considered in determining whether regulatory efforts were unreasonable or unfairly burdened use of the property, etc. JU 03/22/2021 Fav/CS CA RC	Fav/CS Yeas 7 Nays 4
9	SB 1922 Gruters (Similar H 1559)	Dissolution of Marriage; Requiring the court to prioritize certain forms of alimony; revising provisions related to durational alimony; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances, etc. JU 03/22/2021 Temporarily Postponed AP RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 22, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SM 1630 Hutson (Similar HM 1301)	Second Amendment to the Constitution of the United States; Expressing the consensus of the Florida Legislature that proposals forthcoming at the federal level to restrict the right to keep and bear arms violate the Constitution of the United States and affirming the intent of the Florida Legislature to do everything in its power to protect the rights of Florida residents under the Second Amendment to the Constitution of the United States and under the Florida Constitution, etc. JU 03/22/2021 Favorable RC	Favorable Yeas 7 Nays 4
11	SB 402 Rodrigues (Compare CS/H 35)	Public Notice and Voting Rights Restoration Database; Authorizing legal notifications in certain cases to be published on a website established by the Supreme Court, in lieu of newspaper publication; specifying that website publication constitutes proof of publication, unless otherwise determined by a court; authorizing a county to publish such legal notifications in a newspaper, subject to certain limitations, etc. JU 01/25/2021 Temporarily Postponed JU 02/15/2021 Temporarily Postponed JU 03/22/2021 Fav/CS ACJ AP	Fav/CS Yeas 8 Nays 3
12	SB 1380 Rodrigues (Identical H 1101)	Relief from Burdens on Real Property Rights; Revising the definitions of the terms "action of a governmental entity" and "real property"; revising the definition of the term "land", etc. JU 03/22/2021 Not Considered CA RC	Not Considered
13	SB 534 Gibson (Identical H 467)	Insurance Representative Examination Requirements; Exempting certain applicants for licensure as an all lines adjuster from a required examination, etc. BI 03/10/2021 Favorable JU 03/22/2021 Favorable RC	Favorable Yeas 11 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

404H The Capitol

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
	HP	
	RC	

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 26** – Senator Cruz
HB 6511 – Representative DiCeglie
Relief of Estate of Crystle Marie Galloway by the Hillsborough County
Board of County Commissioners

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$2,450,000. THIS AMOUNT IS THE REMAINING BALANCE OF A \$2,750,000 SETTLEMENT AGREEMENT REGARDING THE ALLEGED NEGLIGENCE OF EMPLOYEES OF HILLSBOROUGH COUNTY, WHICH RESULTED IN THE DEATH OF CRYSTLE MARIE GALLOWAY

FINDINGS OF FACT:

The Events of July 4, 2018

On the morning of July 4, 2018, Ms. Nicole Black found her daughter, Ms. Crystle Marie Galloway, in distress. At 3:02 am, Ms. Black dialed 911 to request an ambulance for Ms. Galloway.¹

In conversation with the Hillsborough County Emergency Dispatch Center (EDC) employee, Ms. Black described that she found Ms. Galloway on the floor “drooling from the mouth, lips getting bigger...” and generally unresponsive.² The EDC employee created a Computer Aided Dispatch (CAD)

¹ 911 Call Recording 1 (Jul. 3, 2018).

² *Id.*

Operations Report that reflected the above details, and described the “key question” as “Stroke (CVA) / Transient Ischemic Attack (TIA).”³

At 3:05 a.m., Hillsborough County Fire Rescue (HCFR) Rescue 43 (R43) and Squad 1 units were dispatched to the scene to assist Ms. Galloway, and were informed by a “tear and go sheet” that the nature of the call was “stroke/CVA/TIA.”⁴ Lieutenant Mike Morris was the officer in charge of, and Fire Medic Martin was the junior paramedic assigned to R43. Acting Lieutenant Courtney Barton and Fire Medic Justin Sweeney were assigned to Squad 1.

Hillsborough County Sheriff’s Office personnel were also dispatched to the scene. The sheriff’s deputies arrived at the scene first, and interviewed Ms. Black and Ms. Galloway. They learned that Ms. Galloway had recently given birth by cesarean section,⁵ was complaining of a headache and sensitivity to light, and had not consumed any medication or alcohol. Either the sheriff’s deputies, Ms. Black, or both, ultimately relayed this information to Acting Lieutenant Barton and Lieutenant Morris after their arrivals on the scene.⁶

According to Deputy Grace, he observed the HCFR medics interact with Ms. Galloway, who cried hysterically and complained of a headache and stomachache to them.⁷

HCFR personnel arrived at the scene at 3:17 a.m. Medic Sweeney reached Ms. Galloway first. He found her lying in bed, covered by a blanket; he asked her if she wanted to go to the hospital and Ms. Galloway nodded to indicate “yes.”⁸ Ms. Galloway rose from the bed, and Medic Sweeney assisted

³ Hillsborough County Emergency Dispatch Center, *CAD Operations Report: Call Number 1807-064728*, July 4, 2018. A second CAD Report was generated as a result of two 911 calls made regarding Ms. Galloway. The second call and related CAD report were aborted because it was determined that Ms. Black was on another phone line with a different dispatcher. See, Hillsborough County Emergency Dispatch Center, *CAD Operations Report: Call Number 1807-064729* (July 4, 2018).

⁴ EO Case No. 447-E8, Barton Interview, 27 (Aug. 6, 2018). EO Case No. 448-18, Morris Interview, 38-39 (Aug. 6, 2018).

⁵ Ms. Galloway gave birth to her third child, Jacob Aiden Flowers, via Cesarean section on June 27, 2018.

⁶ Arbitrator deposition of Morris, 388 (Mar. 18, 2019). Barton Statement for Incident 55108 (2018). FMCS Case No.: 191115-01560, Interview of Deputy Grace re: John Morris, 6-7 (Aug. 9, 2018); FMCS Case No.: 191115-01560, Interview of Deputy Lamb re: John Morris, 7 (Aug. 9, 2018).

⁷ Interview of Deputy Grace, 13, (Aug. 9, 2018).

⁸ Sweeney Deposition, 17 (Feb. 18, 2020).

Ms. Galloway to a nearby stair chair device;⁹ before Ms. Galloway sat down on the stair chair device, she retched. An HCFR responder handed Ms. Galloway an emesis bag from the Lifepak 15.¹⁰ HCFR employees then placed Ms. Galloway into the stair chair, helped to transport her downstairs, and assisted her into Ms. Black's car. Ms. Black and Ms. Galloway then left the scene. R43 and Squad 1 units ended the call and went back into service at approximately 3:30 a.m. HCFR responders testified that they treated this call as a "lift-assist" or citizen assist, wherein transport via ambulance was not requested or required.¹¹

During the call to Ms. Galloway's home, Ms. Galloway was able to respond non-verbally to commands and to take a few short steps with the assistance of another person.

Ms. Galloway's In-Patient Care

Ms. Black began to drive Ms. Galloway to Brandon Urgent Care Center—a standalone E.R. with no neurosurgical capabilities. While en route, Ms. Galloway began to suffer seizures. Employees of the Brandon Urgent Care Center began to treat Ms. Galloway at approximately 3:55 a.m., conducted a CT scan of her brain, diagnosed her with acute subarachnoid hemorrhage (stroke), and at approximately 5:00 a.m., requested to transfer her to Tampa General Hospital, because "services were not available at this [Brandon Urgent Care Center] Facility."¹² Ms. Galloway was intubated and then lifeflighted to Tampa General Hospital, where she arrived at approximately 6:00 a.m. Ms. Galloway was ultimately admitted as an inpatient to Tampa General Hospital's neuroscience ICU at approximately 12:00 pm.¹³ Ms. Galloway underwent diagnosis cerebral angiogram and ultimately had surgery as a course of her treatment at Tampa General.

⁹ EO Case No. 449-18, Sweeney Interview, 42-45 (Aug. 6, 2018). Medic Martin brought the stair chair device upstairs at the instruction of Lieutenant Morris.

¹⁰ EO Case No. 447-E8, Barton Interview, 30 (Aug. 6, 2018). A Lifepak 15 is a piece of medical equipment that is used to obtain vitals, such as blood pressure and pulse rate. It can also perform EKGs. Barton Deposition, 59-60 (Feb. 18, 2020).

¹¹ Arbitrator Deposition of Morris at 410, 412 (Mar. 18, 2019). EO Case No. 449E-18, Sweeney Interview at 89-90 (Aug. 6, 2018). EO Case No. 45-E8, Martin Statement re: Incident 0055108, (July 7, 2018).

¹² Brandon Regional ER patient records for Crystle Galloway at 2 (July 4, 2018). *See also, id.* at 7 (Stating the "[c]ase was discussed with neurosurgeon who at the moment stated that the patient did not need to be intubated...and to be transferred to facility who is neuro interventional capable").

¹³ Tampa General Hospital patient records for Crystle Galloway, 2-3 (July 4, 2018).

On July 9, 2018, Ms. Galloway died. She was 30 years old.¹⁴

HCFR's Electronic Patient Care Records

Both HCFR units that responded to Ms. Galloway's home created an electronic patient care record (ePCR). The ePCR created by Squad 1 classified the call as a "non-transport cancel" and the narrative further states that there was "no medical attention needed." The ePCR created by R43 classified the call as a "non-transport no patient found." R43's ePCR narrative states that the responders found that there was no medical complaint, but that the patient needed help getting down from the third story of her home into her mother's vehicle. It further states that there was "no medical patient and no need for transport or evaluation from HCFR units."

HCFR Policies and Procedures

HCFR employees are required to conform to the standards of conduct provided in the HCFR policies and procedures manual.¹⁵ Additionally, HCFR rules and regulations require its employees to "adhere to legal, professional, and trade rules and standards."¹⁶

Medic Martin, Medic Sweeney, Acting Lieutenant Barton, and Lieutenant Morris all testified that they were familiar with and received training on the below policies and procedures.

HCFR Standing Order and Protocol section 345.18-Patient Assessment, requires an HCFR responder to create a general impression of the patient,¹⁷ and then continue to a primary assessment of the patient. The primary assessment is designed to identify any immediate threat to life and allow a responder to quickly determine any need for critical intervention.

A responder must assess five priorities under the primary assessment:

1) Circulation (check pulse), 2) Airway (check that patient's airway is open), 3) Breathing (ensure patient can breathe, and

¹⁴ Crystle Galloway's Death Certificate (Jul. 24, 2018).

¹⁵ Hillsborough County, County Administrator Policy Manual, Policy Number 7.6, Rule 1 (Oct. 1, 2015).

¹⁶ Hillsborough County Fire Rescue, Policies and Procedures Manuals: Rules and Regulations—Statement of Ethics (Mar. 1, 2010).

¹⁷ HCFR Standards for Medical Documentation section 360.01 defines a "patient" as "a person encountered by a member of HCFR who by complaint of injury or illness, observation of the responder, or mechanism of injury may be expected to require medical evaluation and/or attention."

is doing so normally), 4) Disability (assess patient's ability to respond to stimuli—both verbal and physical),¹⁸ and 5) Expose (expose the body to identify threats or trauma).

At this point, the responder should make an initial determination whether the patient is a "Priority/ALS patient" who requires rapid transport to the hospital, or who needs or will benefit from paramedic level care en route.

Next, a responder is required to complete a secondary assessment, and repeat it throughout the duration of care as dictated by patient conditions. The secondary assessment requires:

1) Vital signs—including pulse rate, respiratory rate, blood pressure, EKG and blood oxygen monitoring as appropriate, Glasgow coma score, pupil response, and blood sugar level; 2) a head-to-toe exam, and 3) a focused patient history inquiring about the patient's signs and symptoms, allergies, medications, pertinent medical history, last oral intake, and events leading up to the injury or illness.

The responder must thoroughly document all information he or she gathered and interventions he or she performed during the course of care.

HCFR Standing Order and Protocol section 360.01- General Standards for Documentation, requires that "any response or encounter with a patient...shall have an ePCR (electronic patient care record) completed by all units..." The protocol then details different recording requirements for different patient situations.

First, this protocol requires the Rescue Officer to ensure proper documentation of all pertinent data as it relates to the patient encounter and all care rendered.

Second, this protocol requires a responder who encounters a patient who refuses medical transportation to ensure that the patient is competent; the responder must also completely document his or her patient encounter and exam. The responder's exam must include at least two sets of the patient's vital signs and a thorough evaluation. Additionally,

¹⁸ An assessment of the patient's disability requires that the responder communicate with the patient, and that the patient respond. EO Case No. 45-E8, *Martin Interview*, 15 (Aug. 6, 2018); and EO Case No. 449E-18, *Sweeney Interview* at 18 (Aug. 6, 2018).

the responder must document all efforts made to convince the patient to seek higher level of medical care, and receive an informed refusal document signed by a competent patient.

Third, this protocol requires a responder who assists a citizen with a citizen assist or a lift assist call to complete an ePCR, which includes the patient's demographics, mental status, vital signs, the evaluation performed to determine that there was no illness or injury present, and a description of the service provided.

Transport to Stroke Center

The responders to the scene all recognize that if a patient is identified as a stroke patient, rapid transport to a stroke center would be the appropriate standard of care.¹⁹

Performance of Patient Assessment or Evaluation of Patient's Vital Signs

At no time did HCFR personnel ask Ms. Galloway or Ms. Black why transport to the hospital had been requested.²⁰ Additionally, HCFR personnel did not obtain any of Ms. Galloway's vital signs or otherwise perform a complete assessment to determine if transportation to the hospital or medical treatment was warranted.

Fire Medic Martin:

In pertinent part, Fire Medic Martin testified that:

- He did not perform a primary assessment.
- He did not determine whether Ms. Galloway was stable, but merely brought the stair chair upstairs.
- He did not "put hands on or touch the patient."²¹
- He did not interview or talk to Ms. Galloway.²²
- He did not obtain a SAMPLE history.²³
- He did not get a refusal of treatment and transport.²⁴

Fire Medic Sweeney:

In pertinent part, Fire Medic Sweeney testified that:

¹⁹ EO Case No. 45-E8, *Martin Interview* at 60 (Aug. 6, 2018); EO Case No. 449E-18, *Sweeney Interview* at 91-92 (Aug. 6, 2018). EO Case No. 447-E8, *Barton Interview* at 58 (Aug. 6, 2018). EO Case No. 448-E18, *Morris Interview* at 75 (Aug. 6, 2018).

²⁰ EO Case No. 45-E8, *Martin Interview* at 65-66 (Aug. 6, 2018).

²¹ *Id.* at 28.

²² *Id.* at 29 and 49.

²³ *Id.* at 30.

²⁴ *Id.* at 32.

- He did not ask Ms. Galloway what was wrong with her.²⁵
- He did not take her pulse or otherwise obtain her vitals.²⁶
- He did not interview the patient.²⁷
- He did not obtain a SAMPLE history.²⁸
- He did not obtain a refusal of treatment from Ms. Galloway.²⁹

Acting Lieutenant Courtney Barton

In pertinent part, acting Lieutenant Barton testified that:

- She did not perform a primary assessment;³⁰
- She did not obtain Ms. Galloway's vitals;³¹
- She did not interview Ms. Galloway.³²

Lieutenant John Michael Morris

In pertinent part, Lieutenant Morris testified that:

- He did not take her pulse.³³
- He did not obtain a SAMPLE history.³⁴
- He did not obtain a refusal of treatment.³⁵
- "Vitals were not taken that night."³⁶

Expert Witness Testimony

Expert witness John Everlove concluded that, based on his review of relevant documents from Ms. Galloway's case, the HCFR responders' failure to perform a full assessment of or obtain baseline vitals from Ms. Galloway (among other breaches of duty) resulted in Ms. Galloway "not receiving appropriate and timely medical intervention, treatment and transportation for her life-threatening condition, contributing to her death."

²⁵ EO Case No. 449E-18-E8, Sweeney Interview at 87. Sweeney Deposition, p. 22-23.

²⁶ EO Case No. 449E-18-E8, Sweeney Interview at 48 and 52. Sweeney Deposition, pp. 13-14; 33.

²⁷ EO Case No. 449E-18-E8, Sweeney Interview at 50. Sweeney Deposition, p. 14-15.

²⁸ EO Case No. 449E-18-E8, Sweeney Interview at 51.

²⁹ EO Case No. 449E-18-E8, Sweeney Interview at 56. Sweeney Deposition, p. 19.

³⁰ EO Case No. 447-E8, Barton Interview at 46. Barton Deposition, p. 41-42.

³¹ EO Case No. 447-E8, Barton Interview at 47. Barton Deposition, p. 41.

³² *Id.* at 48.

³³ Arbitrator Deposition of Morris, at 396.

³⁴ EO Case No. 448-18, *Morris Interview* at 56.

³⁵ *Id.* at 61, 68.

³⁶ *Id.* at 67.

Additionally, expert witness Dr. Matthew Moore concluded “within a reasonable degree of medical probability, that the failure of the Hillsborough County Fire Rescue personnel to perform a physical evaluation, obtain vital signs, stabilize and transport Crystle Galloway to an appropriate facility caused or significantly contributed to her demise.”

Estimated Economic Losses

Ms. Galloway is survived by three children: Jessica Ann Flowers, Jacob Aiden Flowers, and Teneisha Adrianna Brown, who were 12 days old, 7 years old, and 13 years old, respectively, at the time of her death. An expert witness testified that the present value of the economic loss to her children as a result of Ms. Galloway's death is \$2,856,196.³⁷

Litigation History and Settlement

Ms. Black, acting as representative of Ms. Galloway's estate, filed a civil cause of action in Hillsborough County seeking relief as a result of this incident.³⁸ Prior to trial, the parties arrived at a settlement agreement³⁹ and the case was subsequently closed.⁴⁰

Settlement

Counsel for claimant's estate believed the potential jury verdict value of this matter would be between \$6 million and \$8 million. The respondent did not admit liability or responsibility for the incident, but did reach a mediated settlement agreement of \$2.75 million. As part of the agreement, the respondent agreed to be silent on the claim bill, not support or oppose the bill, and did not present a case or argument at the special master hearing.⁴¹

³⁷ Raffa Consulting Economists, A Present Value Analysis of the Loss of Dependent Support, and the Loss of the Household and Childcare Services Sustained as a Result of the Death of Ms. Crystle Marie Galloway, 10 (Apr. 17, 2020).

³⁸ *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

³⁹ Settlement and Release Agreement (June 10, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

⁴⁰ Notice of Voluntary Dismissal (Aug. 31, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).

⁴¹ Settlement and Release Agreement for *Black v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div. F (Fla. 13th Jud. Circ. 2019).

Funds Received by Claimants

Pursuant to settlement agreement, claimant will receive funds from the Hillsborough County Board of County Commissioners.

Respondent's Payment Pursuant to the Statutory Cap

The claimant will receive the full amount of the respondent's statutory limit (\$300,000 per incident) from the Hillsborough County Board of County Commissioners and seeks the remaining balance of the settlement (\$2.45 million) through this claim bill. According to attorney for the claimant, these funds will be divided equally among Ms. Galloway's three children and held in a trust for their education and care by a judicially-appointed trust administrator.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 23, 2021, was a *de novo* proceeding to determine whether Hillsborough County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to \$200,000 for one individual and \$300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the claimant will not receive the full amount of its judgment unless the Legislature approves this claim bill authorizing the additional payment.

In this matter, the claimant alleges negligence on behalf of Hillsborough County Fire Rescue employees Martin, Morris, Sweeney, and Barton. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.⁴²

⁴² *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 (Fla. 4th DCA 2013).

Negligence

There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation—where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.⁴³

Duty

Statute, case law, and agency policy describe the duty of care owed by medical personnel. Generally, the standard of professional care is a level of care, skill, and treatment that, in consideration of all surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably prudent health care providers.⁴⁴

Ms. Galloway, by complaint of her illness via her mother's call to 911, was a patient who had an expectation of medical evaluation or attention. HCFR personnel therefore had a duty according to law and their employer's policies and procedures to (1) obtain vitals—including pulse—from the patient, Ms. Galloway, and (2) perform a head-to-toe examination.

Breach

HCFR personnel Barton, Morris, Martin, and Sweeney breached the duty described above when they failed to take Ms. Galloway's vitals and failed to perform a secondary assessment of Ms. Galloway.

Causation and Damages

Ms. Galloway's death was the natural and direct consequence of the HCFR personnel's breach of their duties. As a result of the HCFR responders' failure to perform their duties, Ms. Galloway was not treated for her subarachnoid hemorrhage in a timely manner and ultimately died, resulting in the loss of her potential earning.

The paramedics were acting within the course and scope of their employment with Hillsborough County at the time they failed to assess Ms. Galloway. Hillsborough County, as the

⁴³ *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

⁴⁴ *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); see also section 401.411, F.S.

employer, is liable for damages caused by its employee's negligent act.⁴⁵

According to the economic analysis done by the Raffa Consulting Economists, Ms. Galloway's estate suffered damages of at least \$2,856,196 due to her premature death. A representative of Ms. Galloway's estate and Hillsborough County have agreed to settle this matter for \$2.75 million. This figure is reasonable based on the evidence.

ATTORNEY FEES:

The attorney for Ms. Galloway's estate has agreed to limit his fees to 25 percent of any amount awarded by the Legislature (not to exceed \$612,500), and the lobbyist for Ms. Galloway's estate has agreed to limit his fees to 5 percent of any amount awarded by the Legislature (not to exceed \$122,500), in compliance with s. 768.28(8), F.S.

RECOMMENDED
AMENDMENT:

The undersigned recommends removing language from lines 41-45 of the bill, as no testimony was presented to that effect.

RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

/s/Jessie Harmsen
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute removes an allegation that the paramedics refused to take Ms. Galloway to the hospital because it looked like she had too much to drink. The committee substitute also replaces the limit on attorney fees expressed as a percentage of the proceeds of the bill with separate dollar value limits on attorney fees, lobbying fees, and costs.

⁴⁵ *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981); *Stinson v. Prevatt*, 84 Fla. 416 (1922).



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #26**, relating to Relief of the Estate of Crystle Marie Galloway/Hillsborough County Board of County Commissioners, be placed on the:

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

A handwritten signature in black ink, appearing to read "Janet Cruz", is written over a horizontal line.

Senator Janet Cruz
Florida Senate, District 18

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

404H The Capitol

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
	CJ	
	RC	

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 398** – Senator Rodriguez
HB 6503 – Representative Rodriguez
Relief of the Estate of Emilio Jesus Vizcaino-Aday

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$350,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A SETTLEMENT REGARDING THE NEGLIGENCE OF A MIAMI-DADE POLICE OFFICER, WHICH RESULTED IN THE DEATH OF EMILIO JESUS VIZCAINO-ADAY.

FINDINGS OF FACT:

The Crash on March 6, 2018

At approximately 1:23 a.m., on the morning of March 6, 2018, Mr. Emilio Jesus Vizcaino-Aday, a forty-five year old man, was struck by a vehicle operated by Officer John Young Song, an on-duty Miami-Dade Police officer.

Prior to the crash Officer Song was following a car suspected of involvement in a recent home burglary where two vehicles were stolen. Officer Song was accompanied by his partner, Officer Cesar Echaverry. The officers traveled at a high speed in this pursuit, but did not activate the vehicle's emergency lights or siren, and did not initiate a traffic stop.

Officer Song approached the intersection where the crash occurred at a speed of 86 miles per hour according to the Event Data Recorder on board the vehicle. The posted speed limit is 40 miles per hour. Officer Song passed but did not yield to a stop sign, which was visible and unobstructed, and struck Mr. Vizcaino-Aday's vehicle on the driver's side in the intersection at 68 miles per hour. According to the accident reconstruction report, Mr. Vizcaino-Aday travelled at approximately 31 miles per hour, and did not have a stop sign on his route into the intersection.

Mr. Vizcaino-Aday was pronounced dead on the scene from blunt force trauma experienced in the crash.

Mr. Vizcaino is survived by his wife, Ailin Aday, and son, Neiser Josa Vizcaino Rojas.

Settlement

More than a year of litigation followed the crash. Miami-Dade County admits the facts above, and defended solely on a theory of Officer Song's actions exhibiting "wanton and willful disregard of human rights, safety, or property," as provided in section 768.28(9) of the Florida Statutes.¹

Claimant and Miami-Dade County entered a post-mediation settlement agreement for \$650,000. Claimant received \$300,000 from Miami-Dade County and seeks the remaining \$350,000.

Miami-Dade County supports the relief and reports that the funds will be dispersed from their self-funded Insurance Trust Fund, and will not affect the operations of the County.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes (2018), waives sovereign immunity for tort liability for a claim or judgment by one person up to \$200,000 and up to \$300,000 per incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

A county is liable for a negligent act committed by an employee acting within the scope of employment.² Mr. Song was an on-duty Miami-Dade police officer operating his police

¹ *Emilio Jesus Vizcaino-Aday v. Miami-Dade County*, Case No. 19-21301 CA 01 (Cir. Ct. Miami-Dade County, 2020), Miami Dade County's Answer to Plaintiff's Second Amended Complaint.

² Section 768.28, F.S.

cruiser within the scope of his employment, thereby making Miami-Dade County liable for any negligent acts committed by him.

Regardless of any jury verdict or settlement, claim bills are reviewed *de novo*, and each element of negligence must be found within the evidence.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.³

Duty

Officer Song had a duty to operate his vehicle at all times with consideration for the safety of other drivers.⁴ A police officer owes a duty to exercise reasonable care to protect bystanders when their duties produce foreseeable risk. Following a suspected stolen vehicle at more than twice the posted speed limit undoubtedly created a zone of risk. Therefore, it was Officer Song's duty to take actions that would lessen the risk of foreseeable harm created by this zone of risk.

Furthermore, Officer Song is authorized as an emergency vehicle in pursuit of a suspected violator of the law to "proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation" and "exceed the maximum speed limits so long as the driver does not endanger life or property."⁵

Breach

As the evidence demonstrates, Officer Song violated statutes and breached the required duty of care. Officer Song proceeded past the stop sign without sufficient slowing, and exceeded the speed limit in a manner that did endanger life

³ Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

⁴ See *City of Pinellas Park v. Brown*, 604 So.2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); *Brown v. Miami-Dade Cnty.*, 837 So.2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders... when their law enforcement activities create a foreseeable zone of risk").

⁵ Section 316.072(5), F.S.

and property. Officer Song also failed to activate his lights and sirens to notify passersby of the foreseeable risk. These factors combined show that Officer Song clearly violated statutes and failed to uphold his required duty of care.

Causation

Officer Song's breaches of duty, including his failure to activate lights and sirens, failure to slow adequately before proceeding past the stop sign, and failure to safely exceed the maximum speed limits are the direct cause of the resulting damages. A collision was a foreseeable outcome from the risk produced by Officer Song's high speed pursuit and failure to obey the stop sign. But for Officer Song approaching the intersection at an unsafe speed without sirens or lights activated, the crash would not have happened in the same manner, if at all. The evidence therefore demonstrates that Officer Song was at fault for the crash that resulted in damages.

Damages

As an immediate result of the March 6, 2018, crash, Mr. Vizcaino-Aday died. The amount of damages sought in this bill, \$350,000, is reasonable given the outcome of the accident. Mr. Vizcaino-Aday is survived by his wife and adult son, and worked both a full-time and part-time job in order to help provide financially for both of them. The agreed amount settled upon represents the pain and suffering, as well as loss of consortium and financial support experienced by Mr. Vizcaino-Aday's wife and child.

ATTORNEY FEES:

The bill states that the total amount paid for attorney fees, lobbying costs, and similar expenses may not exceed 25 percent of the amount awarded.

RECOMMENDATIONS:

The undersigned recommends changing the references to "the Estate of Neiser Josa Vizcaino Rojas" on lines 30, 39, and 48 to correctly refer to "the Estate of Emilio Jesus Vizcaino-Aday."

For the reasons set forth above, the undersigned finds that the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is

reasonable. The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Jack O. Hackett, III
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary

The committee substitute clarifies that the recipient of the proceeds of the claim bill is the estate of Emilio Jesus Vizcaino-Aday, the person whose death was the basis of the claim bill.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #398**, relating to Relief of the Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

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 382

INTRODUCER: Senator Hooper

SUBJECT: Clerks of the Court

DATE: March 22, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Favorable
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 382 specifies that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply to services for performing services related to a “court record.” This will allow a clerk of court to retain the entire service charge collected for performing a service not related to a court record.

The bill revises the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that \$20 of the \$100 fee be transferred to the General Revenue Fund. Thus, the full \$100 filing fee will be retained by the clerk.

The bill revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system. The current procedure provides for *pre-imburement* in which clerks send a quarterly funding estimate of their costs to the Florida Clerks of Court Operations Corporation (CCOC) for review. The CCOC completes its review, and submits the estimate to the Justice Administrative Commission (JAC) for review, verification that the funds are available, and processing of the quarterly payment. The bill changes the payment process to a *reimbursement* process for actual costs incurred in the previous quarter. Each clerk must attest to the actual costs to compensate jurors and submit a request for reimbursement to the CCOC. The CCOC must review the requests and forward them to the JAC, which in turn submits a request for payment to the Chief Financial Officer.

The bill appears to have an indeterminate fiscal impact.

The bill takes effect July 1, 2021.

II. Present Situation:

Clerks of the Court - In General

The State Constitution establishes the office of clerk of the circuit court in each of the state's 67 counties. Each clerk is elected by the voters to a 4-year term. The State Constitution further provides that the clerk's duties may be divided by special or general law between two officers. Under that arrangement, one serves as clerk of the court and one serves as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.¹ Nearly all counties have a single clerk performing both court-related services and county-related services.

Florida Clerks of Court Operations Corporation

The Legislature created the Florida Clerks of Court Operations Corporation (CCOC) in 2003. It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state. All clerks of the circuit court are members and hold their position and authority as ex officio members. The responsibilities assigned to the corporation are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.²

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.³ The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.⁴

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; *and*

¹ FLA. CONST. art. V, s. 16 and art. VIII, s. (1)(d).

² Section 28.35(1), F.S.

³ Florida Clerks of Court Operations Corporation, *Welcome to Florida Clerks of Court Operations Corporation (CCOC)*, available at <https://flccoc.org/>.

⁴ Section 28.35(2)(c), (d), (e), and (f), F.S.

- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.⁵

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001⁶ within the Department of Revenue (DOR). The Trust Fund was transferred to the JAC in 2009 when the clerks' budget was placed in the state budget process. The Trust Fund was transferred back to the DOR in 2013 when the clerks' budget was removed from the GAA. The Trust Fund exists as a one sentence item in the statutes with no mention of a purpose.

According to the CCOC, the Trust Fund is used as a repository for funds from counties that have a projected revenue surplus. Section 28.37(2), F.S., provides that, since November 1, 2013, all fines, fees, service charges, and costs that are collected by the clerks for the previous month which exceed one-twelfth of the clerks' total budget for performing court-related functions must be remitted to DOR for deposit into the Clerks of the Court Trust Fund. Those funds are distributed by DOR to clerks in counties that have a projected revenue deficit. The CCOC also uses the Trust Fund to annually reconcile the clerks' expenditures. In the reconciliation process at the end of the year, a clerk's total revenues are compared to total expenditures. Some clerks will receive additional money to meet expenses, and other clerks will be required to return money because he or she had a surplus of revenue after covering expenses.

Additionally, during the 2019 legislative session, s. 28.37, F.S., was amended to require:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million be transferred to the General Revenue Fund;
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed \$20 million; and
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund.

Service Charges Collected by a Clerk of Court

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.⁷ Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are "court-related" functions, while other services are "county-related" functions performed by the clerk in its capacity as County Recorder,⁸ such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested. For example, s. 28.24(3), F.S., describes a charge for certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of this record is a court-related function, while if the

⁵ Section 28.35(2)(f), F.S.

⁶ Section 213.131, F.S.

⁷ Section 28.24, F.S.

⁸ See s. 28.222(1), F.S.

requested record is from the county official records, the clerk's providing of certified copies of this record is a county-related function.

In 2008, the Legislature amended s. 28.24, F.S., increasing many service charges for both county- and court-related functions.⁹ Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the Clerks of Court Operations Corporation (CCOC)¹⁰ to increase the court clerk's budgets.¹¹ As a result, court clerks began retaining services charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the DOR for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.¹²

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 specified charge amounts) to the DOR for deposit into the General Revenue fund. The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments were to be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to collect a \$250 filing fee for appeals from the county to circuit courts and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.¹³ Clerks were required to remit \$50 of these fees to the DOR for deposit into the General Revenue Fund.¹⁴ Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.¹⁵

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.¹⁶ The amendment required the clerks to remit \$80 from both fees to the DOR for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the DOR for deposit into the Clerks of Court Trust Fund.¹⁷ Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.¹⁸ But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks'

⁹ Chapter 2008-111, s. 6, Laws of Fla.

¹⁰ The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. Section 28.35, F.S.

¹¹ Chapter 2008-111, s. 47, Laws of Fla.

¹² Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 2 (January 29, 2021).

¹³ See Ch. 2008-111, s. 8, Laws of Fla.

¹⁴ See *Id.*

¹⁵ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

budgets based on increased revenue generated by the amendments.¹⁹ As a result, the new money collected in excess of the \$80 filing fee, i.e. the \$20 retained from the fees for appeals to the DCAs or Supreme Court, sent to the DOR for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, all of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court was deposited in the General Revenue Fund.²⁰

In 2017, the Legislature again amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the DOR for deposit in the General Revenue Fund.²¹ But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fee to the DOR for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.²²

When the Legislature amended s. 28.241(2), F.S., in 2019, the clerks were required to remit \$20 from the \$280 filing fee for appeals from the county court to the circuit courts to the DOR for deposit into the General Revenue Fund.²³ The 2019 amendments to, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁴

Effective January 1, 2021, most appeals from the county court are filed in the district court of appeal, rather than with the circuit court.²⁵

Jury Management

Court clerks' responsibilities include managing the jury process. This includes determining the qualifications of jurors, issuing jury summons, providing selection lists, reporting, and compensating jurors when necessary to prevent financial hardship.²⁶ It is estimated that Florida clerks summon almost 2 million jurors annually.²⁷

Juror Cost Reimbursement

Under Revision 7 to article V of the Florida Constitution, juror compensation and related expenses were initially a state court system responsibility and paid for with state revenues appropriated by general law.²⁸ The 2004 Legislature amended s. 28.35, F.S., to require the clerks to pay the payment to jurors and witnesses as well as juror meals and lodging.²⁹ Each clerk prepared quarterly estimates of needed funds for the Office of State Court Administrator (OSCA). Based on these estimates, OSCA approved the payment for each clerk. In 2008, the

¹⁹ See Ch. 2008-111, s. 47, Laws of Fla.

²⁰ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

²¹ Chapter 2017-126, s 2, Laws of Fla.

²² Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

²³ Chapter 2019-58, s 8, Laws of Fla.

²⁴ *Id.* at s. 30.

²⁵ Chapter 2020-61, Laws of Fla.

²⁶ See s. 40.001, F.S.

²⁷ Florida Clerks of Court Operations Corporation, *Senate Bill 590 Analysis* (February 6, 2020), available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29742>.

²⁸ Chapter 2003-402, s. 40, Laws of Fla.

²⁹ Chapter 2004-265, Laws of Fla.

Legislature amended the law to clarify that the clerks were financially responsible for paying juror meals and lodging as well as juror and witness payments.³⁰

In recognition of clerk revenue deficits, the 2016 Legislature passed a provision to reimburse the clerks for juror expenses and jury-related personnel costs during the 2016-2017 fiscal year.³¹ The Legislature also appropriated \$11.7 million in recurring general revenue in the General Appropriations Act within the Justice Administrative Commission to support funding these jury expenses.

Budget Procedure for Payment of Jury Costs

The Justice Administration Commission (JAC) is required by s. 40.29(5), F.S., to provide funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs. As noted above, since 2016, the Legislature has provided \$11.7 million annually from General Revenue to cover the projected costs of managing the jury process.³² The funds are released quarterly.

The process established in s. 40.29, F.S., for clerks to submit information to the JAC to request funding, has been modified slightly from statute by agreement between the clerks and the CCOC. The process is as follows:

- Each clerk of the circuit court forwards to the CCOC a *quarterly estimate* of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the *upcoming* quarter. Each clerk must include a signed and dated certification letter by the 10th of the month immediately before the beginning of the requested quarter.
- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and processes the payment through the Department of Financial Services for pre-imbursement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based upon the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer will then issue the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA.

³⁰ Chapter 2008-111, Laws of Fla

³¹ Chapter 2016-62, s. 66, Laws of Fla.

³² For the Fiscal Year 2019-2020 appropriation, see ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . \$11,700,000).

III. Effect of Proposed Changes:

Service Charges

The bill amends various service charges in s 28.24, F.S., to provide that service charge related to a “court record” is required to have a designated portion of the service charge transferred to the General Revenue Fund. A service charge not related to a court record is fully retained by the clerk. No service charge is increased or decreased by the bill.

The bill defines the term “court record” to mean the contents of a court file, to include:

- Progress dockets and other similar records generated to document activity in a case.
- Transcripts filed with the clerk.
- Documentary exhibits in the custody of the clerk.
- Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.
- Electronic records, video recordings, and stenographic tapes of court proceedings.

The bill amends s. 28.222, F.S., regarding the clerk’s role as county recorder, to provide that a service charge related to an instrument recorded in the Official Records is fully retained by the clerk, except that a service charge related to a court record or a court function in the Official Records is subject to the partial distribution to the General Revenue Fund.

Appellate Filing Fees

The bill amends s. 28.241, F.S., to provide that the \$20 distribution to General Revenue from the filing fee paid to a clerk of court of the lower court when filing an appeal does not apply to an appeal from the county court to the circuit court. Thus, the bill provides that a clerk of court retains the entire \$100 fee.

The bill also clarifies in that subsection that the \$100 filing fee payable to the clerk of court as the lower court in the appeal is in addition to the filing fee payable to the appellate court.

Jury Management

The bill modifies the process by which clerks receive funds for jury management by changing the current practice under which clerks receive *pre-imburements* for their costs to one which they will receive *reimbursements* for the costs they have incurred.

The new process by which the clerks will receive reimbursement for jury-related costs is as follows:

- Each clerk of the court shall submit a request for reimbursement to the Florida Clerks of Court Operations Corporation (CCOC) within 20 days after each quarter attesting to the clerk’s actual costs to compensate jurors, to pay for meals or lodging provided to jurors, and to pay jury-related personnel costs.
- The CCOC will review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management.

- The CCOC will then forward the request for reimbursement to the Justice Administrative Commission (JAC) unless the requests total more than is available, in which case the CCOC will adjust the cumulative total to match the available funds before submittal.
- The JAC will then review the amount requested for the most recently completed quarter to determine if funds are available and submit a request for payment to the Chief Financial Officer.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate and likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.222, 28.24, 28.241, 40.29, 27.52, 28.22205, 28.246, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 569.23, and 712.06.

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

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

None.

B. Amendments:

None.

By Senator Hooper

16-00592-21

2021382__

A bill to be entitled

An act relating to clerks of the court; amending s. 28.222, F.S.; requiring certain service charges to be distributed in a specified manner; amending s. 28.24, F.S.; defining the term "court record"; specifying the amount of charges for certain services rendered by, and instruments filed with, the clerk of the circuit court which are not court records; amending s. 28.241, F.S.; revising the distribution of revenue from filing fees from the institution of certain appellate proceedings; amending s. 40.29, F.S.; requiring the clerks of the court to submit requests for reimbursement for jury-related costs to the Florida Clerks of Court Operations Corporation within specified timeframes; requiring the corporation to review such requests for reimbursement; requiring the corporation to submit certain information to the Justice Administrative Commission; requiring the commission to review the information and submit a request for payment to the Chief Financial Officer under certain circumstances; removing a provision authorizing the commission to apportion funds among the counties for certain purposes; amending ss. 27.52, 28.22205, 28.246, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 569.23, and 712.06, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

16-00592-21

2021382__

Section 1. Subsection (7) of section 28.222, Florida Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7) (a) All instruments recorded in the Official Records must remain ~~shall always be~~ open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom. ~~but~~

(b) The clerk is ~~shall~~ not be required to perform any service in connection with such inspection or making of extracts without payment of service charges as provided in s. 28.24.

(c) The clerk, in his or her capacity as county recorder, must retain the service charge payments under s. 28.24, except that those service charge payments that relate to court records or functions and meet the description of court-related functions in s. 28.35(3)(a) must be distributed for those court-related functions.

Section 2. Section 28.24, Florida Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall charge for services rendered manually or electronically by the clerk's office in recording documents and instruments and in performing other specified duties. These charges may not exceed those specified in this section, except as provided in s. 28.345.

(1) For purposes of this section, the term "court record" means the contents of a court file and includes:

(a) Progress dockets and other similar records generated to document activity in a case.

16-00592-21

2021382__

59 (b) Transcripts filed with the clerk.

60 (c) Documentary exhibits in the custody of the clerk.

61 (d) Electronic records, video recordings, and stenographic
62 tapes of depositions or other proceedings filed with the clerk.

63 (e) Electronic records, video recordings, and stenographic
64 tapes of court proceedings.

65 (2) For examining, comparing, correcting, verifying, and
66 certifying transcripts of record in appellate proceedings,
67 prepared by attorney for appellant or someone else other than
68 clerk, per page: 5.00, from which the clerk shall remit 0.50 per
69 page to the Department of Revenue for deposit into the General
70 Revenue Fund.

71 (3)~~(2)~~ For preparing, numbering, and indexing an original
72 record of appellate proceedings, per instrument: 3.50, from
73 which the clerk shall remit 0.50 per instrument to the
74 Department of Revenue for deposit into the General Revenue Fund.

75 (4) (a)~~(3)~~ For certifying copies of any instrument that is a
76 court record in the public records: 2.00, from which the clerk
77 shall remit 0.50 to the Department of Revenue for deposit into
78 the General Revenue Fund.

79 (b) For certifying copies of any instrument that is not a
80 court record in the public records, per page: 2.00.

81 (5) (a)~~(4)~~ For verifying any instrument presented for
82 certification prepared by someone other than clerk, per page:
83 3.50, from which the clerk shall remit 0.50 per page to the
84 Department of Revenue for deposit into the General Revenue Fund.

85 (b) For verifying any instrument that is not a court record
86 presented for certification prepared by someone other than the
87 clerk, per page: 3.50.

16-00592-21

2021382__

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

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

94 (7) ~~(6)~~ For making microfilm copies of any public records:

95 (a) That are court records:

96 1. 16 mm 100' microfilm roll: 42.00, from which the clerk
97 shall remit 4.50 to the Department of Revenue for deposit into
98 the General Revenue Fund.

99 2. ~~(b)~~ 35 mm 100' microfilm roll: 60.00, from which the
100 clerk shall remit 7.50 to the Department of Revenue for deposit
101 into the General Revenue Fund.

102 3. ~~(c)~~ Microfiche, per fiche: 3.50, from which the clerk
103 shall remit 0.50 to the Department of Revenue for deposit into
104 the General Revenue Fund.

105 (b) That are not court records:

106 1. 16 mm 100' microfilm roll: 42.00.

107 2. 35 mm 100' microfilm roll: 60.00.

108 3. Microfiche, per fiche: 3.50.

109 (8) ~~(7)~~ For copying any instrument in the public records by
110 other than photographic process, per page:.....6.00.

111 (9) (a) ~~(8)~~ For writing any paper that is a court record
112 other than a paper otherwise herein specifically mentioned in
113 this section, ~~same as for copying~~, including signing and
114 sealing: 7.00, from which the clerk shall remit 1.00 to the
115 Department of Revenue for deposit into the General Revenue Fund.

116 (b) For writing any paper that is not a court record other

16-00592-21

2021382__

than a paper otherwise specifically mentioned in this section,
including signing and sealing: 7.00.

~~(10)(9)~~ For indexing each entry not recorded:.....1.00.

~~(11)(10)~~ For receiving money into the registry of court:

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

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

(b) Eminent domain actions, per deposit: 170.00, from which
the clerk shall remit 20.00 per deposit to the Department of
Revenue for deposit into the General Revenue Fund.

~~(12)(11)~~ For examining, certifying, and recording plats and
for recording condominium exhibits larger than 14 inches by 8
1/2 inches:

(a) First page:.....30.00.

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

~~(13)(12)~~ For recording, indexing, and filing any instrument
not more than 14 inches by 8 1/2 inches, including required
notice to property appraiser where applicable:

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

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

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

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

1. First page:.....1.00.

2. Each additional page:.....0.50.

16-00592-21

2021382__

146
147 Said fund must be held in trust by the clerk and used
148 exclusively for equipment and maintenance of equipment,
149 personnel training, and technical assistance in modernizing the
150 public records system of the office. In a county where the duty
151 of maintaining official records exists in an office other than
152 the office of the clerk of the circuit court, the clerk of the
153 circuit court is entitled to 25 percent of the moneys deposited
154 into the trust fund for equipment, maintenance of equipment,
155 training, and technical assistance in modernizing the system for
156 storing records in the office of the clerk of the circuit court.
157 The fund may not be used for the payment of travel expenses,
158 membership dues, bank charges, staff-recruitment costs, salaries
159 or benefits of employees, construction costs, general operating
160 expenses, or other costs not directly related to obtaining and
161 maintaining equipment for public records systems or for the
162 purchase of furniture or office supplies and equipment not
163 related to the storage of records. On or before December 1,
164 1995, and on or before December 1 of each year immediately
165 preceding each year during which the trust fund is scheduled for
166 legislative review under s. 19(f)(2), Art. III of the State
167 Constitution, each clerk of the circuit court shall file a
168 report on the Public Records Modernization Trust Fund with the
169 President of the Senate and the Speaker of the House of
170 Representatives. The report must itemize each expenditure made
171 from the trust fund since the last report was filed; each
172 obligation payable from the trust fund on that date; and the
173 percentage of funds expended for each of the following:
174 equipment, maintenance of equipment, personnel training, and

16-00592-21

2021382__

technical assistance. The report must indicate the nature of the system each clerk uses to store, maintain, and retrieve public records and the degree to which the system has been upgraded since the creation of the trust fund.

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

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

16-00592-21

2021382__

needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, may not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

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

(14) (a) ~~(13)~~ Oath, administering, attesting, and sealing of court records, not otherwise provided for in this section ~~herein~~: 3.50, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) Oath, administering, attesting, and sealing of records that are not court records not otherwise provided for in this section: 3.50.

16-00592-21

2021382__

(15) (a) ~~(14)~~ For validating certificates or, any authorized bonds that are court records, each: 3.50, from which the clerk shall remit 0.50 each to the Department of Revenue for deposit into the General Revenue Fund.

(b) For validating certificates or any authorized bonds that are not court records, each: 3.50.

(16) ~~(15)~~ For preparing affidavit of domicile:5.00.

(17) ~~(16)~~ For exemplified certificates, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(18) (a) ~~(17)~~ For authenticated certificates that are court records, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For authenticated certificates that are not court records, including the signing and sealing of them: 7.00.

(19) (a) ~~(18) (a)~~ For issuing and filing a subpoena for a witness, not otherwise provided for in this section, including the herein ~~(includes writing, preparing, signing, and sealing of it)~~: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For signing and sealing only: 2.00, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(20) (a) ~~(19)~~ For approving a court bond: 8.50, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For approving a bond: 8.50.

16-00592-21

2021382__

262 (21) ~~(a)~~ ~~(20)~~ For searching court ~~of~~ records, for each year's

263 search: 2.00, from which the clerk shall remit 0.50 for each

264 year's search to the Department of Revenue for deposit into the

265 General Revenue Fund.

266 (b) For searching records that are not court records, for

267 each year's search: 2.00.

268 (22) ~~(21)~~ For processing an application for a tax deed sale

269 (includes application, sale, issuance, and preparation of tax

270 deed, and disbursement of proceeds of sale), other than excess

271 proceeds:.....60.00.

272 (23) ~~(22)~~ For disbursement of excess proceeds of tax deed

273 sale, first \$100 or fraction thereof:.....10.00.

274 (24) ~~(23)~~ Upon receipt of an application for a marriage

275 license, for preparing and administering of oath; issuing,

276 sealing, and recording of the marriage license; and providing a

277 certified copy:.....30.00.

278 (25) ~~(24)~~ For solemnizing matrimony:.....30.00.

279 (26) ~~(25)~~ For sealing any court file or expungement of any

280 record: 42.00, from which the clerk shall remit 4.50 to the

281 Department of Revenue for deposit into the General Revenue Fund.

282 (27) ~~(a)~~ ~~(26)~~ ~~(a)~~ For receiving and disbursing all restitution

283 payments, per payment: 3.50, from which the clerk shall remit

284 0.50 per payment to the Department of Revenue for deposit into

285 the General Revenue Fund.

286 (b) For receiving and disbursing all partial payments,

287 other than restitution payments, for which an administrative

288 processing service charge is not imposed pursuant to s. 28.246,

289 per month:.....5.00.

290 (c) For setting up a payment plan, a one-time

16-00592-21

2021382__

administrative processing charge in lieu of a per month charge
under paragraph (b):.....25.00.

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

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

Section 3. Subsection (2) of section 28.241, Florida
Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(2) Upon the institution of any appellate proceeding from
any lower court to the circuit court of any such county,
including appeals filed by a county or municipality as provided
in s. 34.041(5), or from the county or circuit court to an
appellate court of the state, the clerk shall charge and collect
from the party or parties instituting such appellate proceedings
a filing fee, as follows: not to exceed \$280, from which the
~~clerk shall remit \$20 to the Department of Revenue for deposit~~
~~into the General Revenue Fund,~~

(a) For filing a notice of appeal from the county court to
the circuit court, a filing fee not to exceed \$280. and, in
~~addition to the filing fee required under s. 25.241 or s. 35.22,~~
~~\$100~~

(b) For filing a notice of appeal from the county or
circuit court to the district court of appeal or to the Supreme
Court, in addition to the filing fee required under s. 25.241 or
s. 35.22, a filing fee not to exceed \$100, of which the clerk
shall remit \$20 to the Department of Revenue for deposit into

16-00592-21

2021382__

the General Revenue Fund. If the party is determined to be indigent, the clerk shall defer payment of the fee otherwise required by this subsection.

Section 4. Subsection (5) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

(5) The Justice Administrative Commission shall reimburse ~~provide~~ funds to the clerks of the court to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs as provided in this section. Each clerk of the court must submit a request for reimbursement ~~shall forward~~ to the Florida Clerks of Court Operations Corporation within 20 days after each quarter attesting to the clerk's actual costs ~~Justice Administrative Commission a quarterly estimate of funds necessary~~ to compensate jurors, to and pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs ~~during the upcoming quarter~~. The Florida Clerks of Court Operations Corporation must review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management. The Florida Clerks of Court Operations Corporation must ~~shall~~ forward to the Justice Administrative Commission ~~a quarterly estimate of~~ the amount necessary to reimburse each clerk of the court for its personnel and other costs related to jury management unless the total request for reimbursement by the clerks exceeds the quarterly funds available to the Justice Administrative Commission, in which case the Florida Clerks of Court Operations Corporation shall adjust the cumulative total to match the available funds before submitting the request to the Justice Administrative

16-00592-21

2021382__

349 Commission. Upon receipt of each request for reimbursement ~~such~~
350 ~~estimates~~, the Justice Administrative Commission must review
351 ~~shall determine~~ the amount deemed necessary for payment to the
352 clerks of the court for the most recently completed ~~during the~~
353 ~~upcoming~~ quarter, determine if the total payment amount is
354 available, and submit a request for payment to the Chief
355 Financial Officer. ~~If the Justice Administrative Commission~~
356 ~~believes that the amount appropriated by the Legislature is~~
357 ~~insufficient to meet such costs during the remaining part of the~~
358 ~~state fiscal year, the commission may apportion the funds~~
359 ~~appropriated in the General Appropriations Act for those~~
360 ~~purposes among the several counties, basing the apportionment~~
361 ~~upon the amount expended for such purposes in each county during~~
362 ~~the prior fiscal year, in which case, the Chief Financial~~
363 ~~Officer shall issue the appropriate apportioned amount by~~
364 ~~warrant to each county~~. The clerks of the court are responsible
365 for any compensation to jurors, for payments for meals or
366 lodging provided to jurors, and for jury-related personnel costs
367 that exceed the funding provided in the General Appropriations
368 Act for these purposes.

369 Section 5. Paragraph (i) of subsection (5) of section
370 27.52, Florida Statutes, is amended to read:

371 27.52 Determination of indigent status.—

372 (5) INDIGENT FOR COSTS.—A person who is eligible to be
373 represented by a public defender under s. 27.51 but who is
374 represented by private counsel not appointed by the court for a
375 reasonable fee as approved by the court or on a pro bono basis,
376 or who is proceeding pro se, may move the court for a
377 determination that he or she is indigent for costs and eligible

16-00592-21

2021382__

for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-

16-00592-21

2021382__

time administrative processing charge under s. 28.24(27)(c) ~~s.~~
~~28.24(26)(c)~~.

Section 6. Section 28.22205, Florida Statutes, is amended
to read:

28.22205 Electronic filing process.—Each clerk of court
shall implement an electronic filing process. The purpose of the
electronic filing process is to reduce judicial costs in the
office of the clerk and the judiciary, increase timeliness in
the processing of cases, and provide the judiciary with case-
related information to allow for improved judicial case
management. The Legislature requests that the Supreme Court set
statewide standards for electronic filing to be used by the
clerks of court to implement electronic filing. The standards
should specify the required information for the duties of the
clerks of court and the judiciary for case management. Revenues
provided to counties and the clerk of court under s.
28.24(13)(e) ~~s. 28.24(12)(e)~~ for information technology may also
be used to implement electronic filing processes.

Section 7. Subsection (5) of section 28.246, Florida
Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary
penalties, fees, charges, and costs; partial payments;
distribution of funds.—

(5) When receiving partial payment of fees, service
charges, court costs, and fines, clerks shall distribute funds
according to the following order of priority:

(a) That portion of fees, service charges, court costs, and
fines to be remitted to the state for deposit into the General
Revenue Fund.

16-00592-21

2021382__

(b) That portion of fees, service charges, court costs, and fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

(c) That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(27)(b) ~~s. 28.24(26)(b)~~ or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(27)(c) ~~s. 28.24(26)(e)~~.

Section 8. Section 45.035, Florida Statutes, is amended to read:

45.035 Clerk's fees.—In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.033 ~~ss. 45.031-45.034~~ and this section:

(1) The clerk shall receive a service charge of \$70, from which the clerk shall remit \$10 to the Department of Revenue for

16-00592-21

2021382__

465 deposit into the General Revenue Fund, for services in making,
466 recording, and certifying the sale and title, which service
467 charge shall be assessed as costs and shall be advanced by the
468 plaintiff before the sale.

469 (2) If there is a surplus resulting from the sale, the
470 clerk may receive the following service charges, which shall be
471 deducted from the surplus:

472 (a) The clerk may withhold the sum of \$28 from the surplus
473 which may only be used for purposes of educating the public as
474 to the rights of homeowners regarding foreclosure proceedings.

475 (b) The clerk is entitled to a service charge of \$15 for
476 each disbursement of surplus proceeds, from which the clerk
477 shall remit \$5 to the Department of Revenue for deposit into the
478 General Revenue Fund.

479 (3) If the sale is conducted by electronic means, as
480 provided in s. 45.031(10), the clerk shall receive an additional
481 service charge not to exceed \$70 for services in conducting or
482 contracting for the electronic sale, which service charge shall
483 be assessed as costs and paid when filing for an electronic sale
484 date. If the clerk requires advance electronic deposits to
485 secure the right to bid, such deposits shall not be subject to
486 the fee under s. 28.24(11) ~~s. 28.24(10)~~. The portion of an
487 advance deposit from a winning bidder required by s. 45.031(3)
488 shall, upon acceptance of the winning bid, be subject to the fee
489 under s. 28.24(11) ~~s. 28.24(10)~~.

490 Section 9. Subsection (2) of section 55.141, Florida
491 Statutes, is amended to read:

492 55.141 Satisfaction of judgments and decrees; duties of
493 clerk.—

16-00592-21

2021382__

494 (2) Upon such payment, the clerk shall execute and record
495 in the official records a satisfaction of judgment upon payment
496 of the recording charge prescribed in s. 28.24(13) ~~s. 28.24(12)~~.
497 Upon payment of the amount required in subsection (1) and the
498 recording charge required by this subsection and execution and
499 recordation of the satisfaction by the clerk, any lien created
500 by the judgment is satisfied and discharged.

501 Section 10. Subsection (6) of section 57.082, Florida
502 Statutes, is amended to read:

503 57.082 Determination of civil indigent status.—

504 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
505 clerk or the court determines is indigent for civil proceedings
506 under this section shall be enrolled in a payment plan under s.
507 28.246 and shall be charged a one-time administrative processing
508 charge under s. 28.24(27)(c) ~~s. 28.24(26)(e)~~. A monthly payment
509 amount, calculated based upon all fees and all anticipated
510 costs, is presumed to correspond to the person's ability to pay
511 if it does not exceed 2 percent of the person's annual net
512 income, as defined in subsection (1), divided by 12. The person
513 may seek review of the clerk's decisions regarding a payment
514 plan established under s. 28.246 in the court having
515 jurisdiction over the matter. A case may not be impeded in any
516 way, delayed in filing, or delayed in its progress, including
517 the final hearing and order, due to nonpayment of any fees or
518 costs by an indigent person. Filing fees waived from payment
519 under s. 57.081 may not be included in the calculation related
520 to a payment plan established under this section.

521 Section 11. Paragraph (c) of subsection (5) of section
522 197.502, Florida Statutes, is amended to read:

16-00592-21

2021382__

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(5)

(c) Upon receiving the tax deed application from the tax collector, the clerk shall record a notice of tax deed application in the official records, which constitutes notice of the pendency of a tax deed application with respect to the property and remains effective for 1 year from the date of recording. A person acquiring an interest in the property after the tax deed application notice has been recorded is deemed to be on notice of the pending tax deed sale, and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application for that property. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of the fees as authorized in s. 28.24(9) and (13) ~~s. 28.24(8) and (12)~~. The contents of the notice shall be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1), and added to the opening bid.

Section 12. Section 197.532, Florida Statutes, is amended to read:

197.532 Fees for mailing additional notices, when application is made by holder.—When the certificateholder makes a written request of the clerk and furnishes the names and addresses at the time of the filing of the application, the clerk shall send a copy of the notice referred to in s. 197.522 to anyone to whom the certificateholder may request him or her to send it, and the clerk shall include in such notice the

16-00592-21

2021382__

statement required in s. 197.522. The certificateholder shall pay the clerk the service charges as prescribed in s. 28.24(6) ~~s. 28.24(5)~~ for preparing and mailing each copy of notice requested by the holder. When the charges are made, they shall be added by the clerk to the amount required to redeem the land from sale.

Section 13. Subsection (3) and paragraphs (a) and (b) of subsection (4) of section 197.542, Florida Statutes, are amended to read:

197.542 Sale at public auction.—

(3) If the sale is canceled for any reason or the buyer fails to make full payment within the time required, the clerk shall readvertise the sale within 30 days after the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the costs of resale. The sale shall be held within 30 days after readvertising. Only one advertisement is necessary. The amount of the opening bid shall be increased by the cost of advertising, additional clerk's fees as provided for in s. 28.24(22) ~~s. 28.24(21)~~, and interest as provided for in subsection (1). If, at the subsequent sale, there are no bidders at the tax deed sale and the certificateholder fails to pay the moneys due within 30 days after the sale, the clerk may not readvertise the sale and shall place the property on a list entitled "lands available for taxes." The clerk must receive full payment before the issuance of the tax deed.

(4) (a) A clerk may conduct electronic tax deed sales in lieu of public outcry. The clerk must comply with the procedures provided in this chapter, except that electronic proxy bidding shall be allowed and the clerk may require bidders to advance

16-00592-21

2021382__

sufficient funds to pay the deposit required by subsection (2).
The clerk shall provide access to the electronic sale by
computer terminals open to the public at a designated location.
A clerk who conducts such electronic sales may receive
electronic deposits and payments related to the sale. The
portion of an advance deposit from a winning bidder required by
subsection (2) shall, upon acceptance of the winning bid, be
subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~.

(b) This subsection does not restrict or limit the
authority of a charter county to conduct electronic tax deed
sales. In a charter county where the clerk of the circuit court
does not conduct all electronic sales, the charter county shall
be permitted to receive electronic deposits and payments related
to sales it conducts, as well as to subject the winning bidder
to a fee, consistent with the schedule in s. 28.24(11) ~~s.~~
~~28.24(10)~~.

Section 14. Paragraph (b) of subsection (2) of section
197.582, Florida Statutes, is amended to read:

197.582 Disbursement of proceeds of sale.—

(2)

(b) The mailed notice must include a form for making a
claim under subsection (3). Service charges at the rate set
forth in s. 28.24(11) ~~s. 28.24(10)~~ and the costs of mailing must
be paid out of the surplus funds held by the clerk. If the clerk
or comptroller certifies that the surplus funds are not
sufficient to cover the service charges and mailing costs, the
clerk shall receive the total amount of surplus funds as a
service charge. For purposes of identifying unclaimed property
pursuant to s. 717.113, excess proceeds shall be presumed

16-00592-21

2021382__

payable or distributable on the date the notice is sent.

Section 15. Paragraph (d) of subsection (3) of section 569.23, Florida Statutes, is amended to read:

569.23 Security requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.—

(3)

(d) The clerk of the Supreme Court shall collect fees for receipt of deposits under this subsection as authorized by ss. 28.231 and 28.24(11)(a) ~~28.24(10)(a)~~. In addition, for as long as any cash remains on deposit with the clerk pursuant to this subsection, the clerk of the Supreme Court is entitled to regularly receive as an additional fee the net investment income earned thereon. The clerk shall use the services of the Chief Financial Officer, as needed, for the custody and management of all bonds, other surety, or cash posted or deposited with the clerk. All fees collected pursuant to this subsection shall be deposited in the State Courts Revenue Trust Fund for use as specified by law.

Section 16. Subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the

16-00592-21

2021382__

claimant shall pay to the clerk the service charge as prescribed in s. 28.24(9) ~~s. 28.24(8)~~ and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(13) ~~s. 28.24(12)~~. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

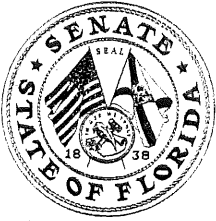
I hereby certify that I did on this, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of County, Florida,
By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 17. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Commerce and Tourism, *Chair*
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Vice Chair*
Appropriations
Community Affairs
Finance and Tax
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

January 13, 2021

Honorable Jeff Brandes
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Brandes,

I am writing to request that SB 382, Clerks of the Court, be placed on the agenda to be heard in the Judiciary Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a large, circular, light-colored stamp or watermark.

Ed Hooper

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

REPLY TO:

- ☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685 (727) 771-2102
- ☐ 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-22-21

Meeting Date

382

Bill Number (if applicable)

Topic Clerk of the Courts

Amendment Barcode (if applicable)

Name Jenna Hodgins

Job Title Sr. Director, Gov. Relations

Address 601 E. Kennedy Blvd.

Phone 813-415-5708

Street Tpa

City Tpa

Fl.

State

33602

Zip

Email jenna.hodgens@hillsclerk.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Cindy Stuart, Clerk of the Court/Comptroller Hills Co.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

SB 382

Bill Number (if applicable)

Topic SB 382

Amendment Barcode (if applicable)

Name Tom Bexley

Job Title Flager County Clerk of Court and Cor

Address _____

Phone 8503456835

Street

Bunnell

FL

32110

City

State

Zip

Email JasonHarrell@FICle

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Court Clerks & Comptrollers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1070

INTRODUCER: Judiciary Committee and Senator Berman

SUBJECT: Estates and Trusts

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1070 amends laws on the transfer of property through wills, probate, and trusts.

The bill creates a comprehensive statutory framework for the creation and operation of a directed trust. Directed trusts are authorized by current law. In a directed trust, someone other than a trustee is allowed to direct some actions of a trustee of the trust.

The bill creates a comprehensive statutory framework for the creation and operation of a community property trust. Community property trusts are not addressed in current law. A community property trust holds property owned by a married couple as if the property was in a community property state, which has certain tax and estate planning advantages.

The bill amends probate law to provide that, absent specific intent in the divorce judgment, an ex-spouse is not a beneficiary of the former spouse's will, regardless of when the will was signed. Currently, an ex-spouse remains as a beneficiary after divorce if the will was signed prior to the wedding and the deceased failed to change the will after divorce.

The bill also requires a probate court to allow a surety bond in lieu of a depository account requirement; provides that the limitations periods for an action against a trust's trustee apply to directors, officers, and employees of the trustee; and applies homestead property law applicable to wills to homestead property held in a decedent's revocable trust.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

II. Present Situation:

Trusts, In General

Chapter 736, F.S., contains the Florida Trust Code (Code). The Code applies to express trusts, charitable or noncharitable, and to trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Under the Code, a settlor is the person who creates or contributes property to a trust.¹ A beneficiary of a trust is a person who has a present or future beneficial interest in the trust.² A trustee is the person who holds the legal title to the property of the trust. The trustee is granted certain powers and is subject to certain duties imposed by the terms of the trust, equity jurisprudence, or by statute. A trustee may have the power or duty to perform various acts of management.

A trustee derives his or her rules of conduct, extent and limit of authority, and measure of obligation from the trust instrument. Under the Code, a violation by a trustee of a duty owed to a beneficiary is a breach of trust. A breach of trust makes the trustee liable for any loss of the trust estate.

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S., which provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.³

One area of trust law that cannot be changed by the terms of a trust is the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. This becomes troublesome where the settlor wants to appoint someone other than a trustee to direct some part of the operation of the trust.

Directed Trusts

In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration. There is no consistent vocabulary to describe the person other than a trustee that holds a power in a directed trust. Several terms are common in practice, including "trust protector," "trust adviser," and "trust director." There is much uncertainty in existing law about the fiduciary status of a nontrustee that has a power over a trust and about the fiduciary duty of a trustee, sometimes called an "administrative trustee" or "directed trustee," with regard to actions taken or directed by the nontrustee.

¹ Section 736.0103(18), F.S.

² Section 736.0103(4), F.S.

³ Section 736.0105(2), F.S.

The concept of a directed trust is briefly addressed in current law at ss. 736.0703(9), and 736.0808, F.S. Those sections allow creation of a directed trust, provide for rights and duties between cotrustees, and provide that a trustee of a revocable trust may follow the direction of someone designated by the settlor unless that action would constitute a serious breach of trust. A person who holds a power to direct is considered a fiduciary.

Community Property Trust

The term “community property” refers to the legal theory, applicable in some states, that most property owned by a married person is jointly owned with the spouse. Nine states are considered “community property states.”⁴ Florida is not a community property state, but some residents come from community property states. Holding property as if community property law applies has certain advantages in divorce, tax avoidance, and estate planning. The Probate Code recognizes community property rights.⁵

Impact of Divorce on Wills and Trusts

One consequence of divorce is that is supposed to be the end of the benefits of marriage. One of the financial benefits of marriage is inheritance. Many persons who divorce neglect to change the terms of their wills, trusts, or other financial instruments, to omit their now former spouse as a beneficiary. This common omission, if not corrected by statute, can lead to unexpected windfalls for an ex-spouse years after divorce, to the detriment of the expected heirs of an estate (such as the current spouse, children, parents, and other family). Current law protects expected heirs from this oversight by creating the legal fiction that, for purposes of inheritance, revocable trusts, and certain beneficiary designations, a past divorce is treated in the distribution as if the surviving former spouse had died on the date of divorce.⁶ This legal fiction does not apply where the divorce judgment specifically requires that the former spouse remain as a beneficiary of the will, trust, or other financial instrument, or where the beneficiary designation is reaffirmed after divorce.

A 2018 appellate case exposed an exception in this area. In that case, the decedent had signed his will prior to the wedding date. The statute on wills requires that the will be signed during the term of the marriage for the ex-spouse to be disinherited by the statute. A strict reading of the statute led to the ex-wife receiving an inheritance, to the detriment of the decedent’s disabled father.⁷

Depository Accounts in Probate

Courts are commonly called on to assume control over a person’s property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial

⁴ The nine states that have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Also, a community-property regime is elective in Alaska. Black’s Law Dictionary (11th ed. 2019).

⁵ Sections 732.216-.228, F.S., known as the Florida Uniform Disposition of Community Property Rights at Death Act.

⁶ Sections 732.507 (wills), 732.703 (certain life insurance, IRAs, retirement plans, and pay on death accounts), and 736.1105 (trusts), F.S.

⁷ *Gordon v. Fishman*, 253 So. 3d 1218 (Fla. 3d DCA 2018)

judge does not have the time or expertise to inventory, manage, and distribute such property, and so a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond.

Surety bonds are expensive, and may not be available at any cost in large or complicated estates. Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries -- the use of a depository account. A depository account may be used where “the size of the bond . . . is burdensome or for other cause.” Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account, a burdensome and costly process.

Probate practitioners report that some jurisdictions require use of a depository account pursuant to a blanket policy. A blanket policy requiring use of a depository account is improper.⁸

Liability of Directors, Officers and Employees

Section 736.1008, F.S., creates limitations periods for a beneficiary’s claim against a trustee for a breach of trust. The trustee has the authority to adequately disclose matters in a trust disclosure document and include a limitations notice to use a 6-month statute of limitations. Where the appointed trustee is a business entity, employees of the trustee may be personally liable for a breach of trust.⁹ It is unclear whether the limitations period for filing a lawsuit against a trustee similarly applies to directors, officers, or employees of the trustee.

Homestead Property in a Trust

The state constitution protects a homestead in three distinct ways. First, it provides homesteads with an exemption from property taxes. Second, the homestead provision protects the homestead from forced sale by creditors. Third, the homestead provision delineates the restrictions a homestead owner faces when attempting to alienate or devise the homestead property.¹⁰ This bill involves the second and third protections.

When held by an individual, a homestead is protected from forced sale by creditors. Of course, this protection does not affect a tax or mortgage lien foreclosure. This protection extends to the heirs of such individual, so that the heirs inherit the homestead property without being subject to creditors of the deceased. It is unclear whether the same protection would apply to a specific devise of homestead property held in a trust. One court has ruled that it did not protect heirs receiving homestead property through a trust because the transfer from the individual to the trust

⁸ *Goodstein v. Goodstein*, 263 So. 3d 78 (Fla. 4th DCA 2019).

⁹ *Beaubien v. Cambridge Consol., Ltd.*, 652 So. 2d 936 (Fla. 5th DCA 1995).

¹⁰ *Snyder v. Davis*, 699 So. 2d 999, 1001–02 (Fla. 1997).

caused the property to lose its homestead status.¹¹ Two appellate courts have held to contrary, finding that homestead property retained its status after transfer to a trust.¹²

The third part of the homestead benefits and limitations trio is related to devise of the property. The term “devise” refers to transfer of property by will. The Probate Code specifically provides that transfer by a trust is the same as a transfer will for purposes of limiting the devise of homestead property. This does not, however, appear in the Trust Code.

Also not appearing in the Trust Code are laws regarding the mechanics of the transfer of title and possession. In probate, title vests in the beneficiary at the moment of death.

It is common in probate proceedings to obtain a court order determining that property owned by the deceased was homestead property on the date of death. Once homestead is determined, the parties can go about the business of paying creditors and distributing property to heirs. A court order determining homestead status is required by title insurance in some circumstances. However, where the property was held in a revocable trust, there is no apparent authority for a court to determine that the trust property was homestead.

III. Effect of Proposed Changes:

Directed Trusts

The bill creates a comprehensive statutory framework for the governance of directed trusts. The bill repeals the brief references to directed trusts in current law. Current law is not changed, just greatly expanded and clarified.

The bill creates Part XIV of the Trust Code, ch. 736, F.S., entitled “Directed Trusts.”

The bill creates s. 736.1403, F.S., to provide that Part XIV applies to a Florida-based trust, including one created before July 1, 2021, but only applies to a decision or action occurring on or after July 1, 2021. If a trust is moved to Florida on or after July 1, 2021, this part only applies to a decision or action taken after the move.

The bill creates s. 736.1405, F.S., to exclude certain persons or transactions from the part. Anyone who holds any power over a trust is subject to this part, so exceptions are required to limit its scope. A person who only holds any of the following powers is not subject to this part, unless specifically subject to this part under the terms of the trust:

- A power of appointment.
- A power to appoint or remove a trustee or trust director.
- Any power of the settlor over the trust while the trust is revocable.
- Any power of a beneficiary, but only to the extent such power only affects the beneficiary or benefits another beneficiary represented by the beneficiary.
- Any non-fiduciary power related to federal income tax planning.
- Any power to add or release a power benefitting the settlor for federal income tax purposes.

¹¹ *Elmowitz v. Estate of Zimmerman*, 647 So. 2d 1064 (Fla. 3rd DCA 1994).

¹² *HCA Gulf Coast Hosp. v. Estate of Downing*, 594 So. 2d 774 (Fla. 1st DCA 1991) (spendthrift trust); *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 1st DCA 2006)(revocable trust).

For purposes of this section and as to a person other than a trustee of the trust:

- The power to designate a recipient of an ownership in the trust is a power of appointment.
- The power to terminate is a power of appointment.
- The power to create, modify, or terminate a power of appointment is a power of direction; unless it is a power to create a power of appointment that is an element of a broader power to affect an ownership interest in trust property beyond the mere creation of a power of appointment.

The bill creates s. 736.1406, F.S., to specify that the general power of a trust director is the power to do what the trust directs. In carryout that responsibility, the trust director has the power to do anything appropriate to the exercise or non-exercise of such power of direction, subject to the limits of s. 736.1407, F.S. However, where there are two or more persons with the same power of direction, they must act by majority vote.

The bill creates s. 736.1407, F.S., to limit the powers of a trust director. A trust director must act as a trustee and comply with the requirements of a special needs trust under the federal Medicaid program,¹³ and with the requirements of a charitable interest in the trust.

The bill creates s. 736.1408, F.S., to provide that the duty of a trust director is the same as the duty of a trustee as to that specific power. The terms of the trust may vary the duty or liability of a trust director, with the same limits that the duty and liability of a trustee may be modified.¹⁴ A trust director who is licensed to practice health care and who furnishes health care services to a beneficiary is liable as provided in health care law and not liable under trust law. The terms of a trust may impose an additional duty or liability on a trust director.

The bill creates s. 736.1409, F.S., to provide the duties and liabilities of a directed trustee. In general, a directed trustee has the duty to reasonably comply with the direction of a trust director. However, a directed trustee is not required to comply with a direction that would constitute willful misconduct. A trustee is responsible for determining whether the trust director currently holds the power to direct the specific action or inaction. A direction to release a trustee or a trust director from liability is ineffective if the breach involved willful misconduct by a trustee or trust director, was induced by improper conduct, or the trust director did not know material facts. A directed trustee may apply to the court for instructions related to this section and the trust must pay the costs and fees. These are minimum requirements, the trust may impose additional duties and liabilities.

The bill creates s. 736.141, F.S., regarding duties to provide information. A trustee and a trust director each has a duty to one another to provide relevant information. Reasonable reliance on such information will not make one or the other liable for a breach of trust, absent willful misconduct. A trust director must provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary, but only to the extent the information is reasonably related to the powers or duties of the trust director.

¹³ 42 U.S.C. s. 1396p(d)(4)(A).

¹⁴ Section 736.0105(2), F.S., lists 23 terms of a trust that are solely governed by the Trust Code and cannot be changed, waived, or otherwise altered by the terms of the trust.

The bill creates s. 736.1411, F.S., limiting duties. Unless provided differently in the trust, a trustee and a trust director have no duty to monitor each other, or to inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee or trust director might have acted differently than the other. Volunteering such information does not thereby create the duty.

The bill creates s. 736.1412, F.S., to allow for a co-trustee to act in the role as a trust director. In such case, the duties and liabilities are the same as those in the directed trustee and trust director roles. This new section is similar to current law at s. 736.0703(9), F.S., in effect.

The bill creates s. 736.1413, F.S., to provide that the limitations periods for an action against a trust director for breach of trust are the same as those applicable to a trustee. The bill creates s. 736.1414, F.S., to provide that a trust director has the same legal defenses as a trustee would in a like situation. The bill creates s. 736.1415, F.S., to provide that a trust director of a trust subject to this Part is subject to the jurisdiction of the state courts. The bill creates s. 736.1416, F.S., to provide that, except as provided in the terms of the trust, a trust director is treated as a trustee for 31 purposes.

If a person has not accepted a trust directorship, or if a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship. The designated trust director must reply within 60 days after receipt.

The bill makes the following conforming changes to the Probate Code related to Directed Trusts:

Applicable to directed trusts, definitions for the Probate Code are amended by adding the following definitions:

- “Directed trust” means a trust which includes a power of direction.
- “Directed trustee” means a trustee subject to direction by a trust director.
- “Power of direction” means a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee.
- “Trust director” means a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

The bill amends s. 736.0105, F.S., regarding requirements of the Trust Code that cannot be modified by the terms of a trust, to allow directed trusts. Specifically, a trustee’s duty of good faith and duty to follow the terms of trust may be modified by a directed trust to provide that:

- A directed trustee may comply with a direction from a trust director, as required by s. 736.1409, F.S. (created by this bill).
- A directed trustee has no duty to monitor or supervise a trust director, as provided by s. 736.1411, F.S. (created by this bill).
- Where a co-trustee is given a power of direction, and whenever that co-trustee is exercising a power of direction, that co-trustee is treated as if he or she were a trust director and the

excluded trustee (one that must comply with the power of direction) is treated as if he or she were a directed trustee.

Section 736.1008, F.S., regarding limitations on actions against a trustee, is amended to additionally apply to actions against a trust director, and to actions against a director, officer or employee of a trust director.

Section 736.1017, F.S., regarding a certification of trust, is amended to include requirements applicable to a directed trust. That section currently lists disclosures regarding the trust that a trust can furnish to a third party rather than giving a copy of the trust. The bill adds the following required disclosures:

- Whether the trust includes a power of direction.
- Identity of current trust directors.
- The trustee powers subject to a power of direction.
- Whether a power of direction related to the proposed transaction has been used in relation to the transaction.

Current statutes on directed trusts, at ss. 736.0703(9) and 736.0808, F.S., are repealed.

Current statutes at ss. 736.0802, 736.08125, and 738.104, F.S., are amended to update cross-references.

Community Property Trusts

The bill creates Part XV of the Trust Code, ch. 736, F.S., entitled “Community Property Trust Act.”

The bill creates s. 736.1502, F.S., to define terms applicable to the part:

- “Community property” means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.
- “Community property trust” means an express trust that complies with s. 736.1503, F.S., and is created on or after July 1, 2021.
- “Decree” means a judgment or other order of a court of competent jurisdiction.
- “Dissolution” means either termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or entry of a decree of legal separation maintenance.
- “During marriage” means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.
- “Qualified trustee” means either a natural person who is a resident of the state; or a company authorized to act as a trustee in the state.
- “Settlor spouses” means a married couple who establishes a community property trust pursuant to this part.

The bill creates s. 736.1503, F.S., to set the requirements for creation of a community property trust. To create a community property trust, the trust must:

- Expressly say that it is a community property trust.
- Appoint a qualified trustee.
- Be signed by both spouses. Most community property trusts will have testamentary effect, in which case the trust documents must follow existing trust and homestead law applicable to similar trusts, i.e., must be signed with the same formalities as a will.
- Contain this notice:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE

The bill creates s. 736.1504, F.S., to set forth the terms of an agreement to create a community property trust. In the agreement, the spouses may:

- Determine rights and obligations regarding property in the trust.
- Describe management and control.
- Set forth the disposition of trust property upon dissolution, death, or other event.
- Declare whether the trust is revocable or irrevocable.
- Set any other lawful term of the trust which does not otherwise destroy the community property status of the property transferred to the trust.

A surviving spouse may amend the terms of a community property trust as to that spouse's half interest, even if the trust is otherwise irrevocable. During the lifetime of both, the spouses are the only qualified beneficiaries of the trust; and after the death of one, the surviving spouse is the only qualified beneficiary of his or her half. This applies whether the trust is revocable or irrevocable.

The bill creates s. 736.1505, F.S., creating miscellaneous provisions regarding a community property trust and property of the trust:

- The spouses may or may not be domiciled in the state.
- No consideration is required for creation of a community property trust.
- All property held by a community property trust is community property.
- Property distributed by a community property trust loses its characterization as community property unless a foreign law makes such property community property.

The bill creates s. 736.1506, F.S., to provide creditor rights in the assets of a community property trust. As to non-homestead property held by the trust, an obligation of one spouse may only be satisfied from that spouse's half, and an obligation of both may be satisfied from the trust.

The bill creates s. 736.1507, F.S., to provide for the death of spouse. Upon the death of a spouse:

- The surviving spouse's half of the trust is protected and is not counted as an asset of the decedent spouse's estate for purposes of the elective share.
- The decedent spouse's half of the trust is subject to probate unless it is protected as homestead property.
- The trustee has the discretion to determine which assets of the trust will be used for distribution to the heirs of the decedent spouse.

The bill creates s. 736.1508, F.S., to provide that a community property trust terminates upon dissolution of the marriage. Upon dissolution, trust assets are split evenly unless otherwise required by an agreement agreed to by both spouses. Section 61.075, F.S., which sets the default standards for distribution of assets in divorce, does not apply to assets held in a community property trust.

The bill creates s. 736.1509, F.S., to provide that the existence of a community property trust does not adversely affect the right of a child of the settlor spouses to support that either would be legally required to pay. This section does not address support owed to a child of one of the spouses, thus that situation would be governed by s. 736.1506, F.S. (as created by this bill), which would allow legal attachment against the parental spouse's half interest.

The bill creates s. 736.151, F.S., to specify that homestead property transferred to a community property trust retains its homestead character. All three forms of homestead apply (property tax exemption including Save Our Homes, protection from creditors, and limitation on devise).

The bill creates s. 736.1511, F.S., to set out the interpretation and treatment of a community property trust under federal tax law. The bill provides that property in a community property trust is considered community property under Florida law for purposes of establishing the taxable basis under 26 U.S.C. s. 1014(b)(6). That federal law provides for calculation of the taxable basis in community property of the decedent as of the time of his or her death. Additionally, community property transferred from another state retains its character as community property while in a Florida community property trust. Property in a community property trust that is revoked only retains its character as community property in Florida if it otherwise would as foreign property under current probate law.¹⁵

The bill creates s. 736.1512, F.S., to make certain community property trusts unenforceable. A community property trust is unenforceable if:

- The terms were unconscionable when made;
- The spouse against whom enforcement is sought did not enter into the agreement voluntarily; or
- The spouse against whom enforcement is sought did not receive fair and reasonable financial disclosure, did not waive disclosure, and did not have notice of the other spouse's finances.

¹⁵ Current probate law as ss. 732.216 through 732.228, F.S., is the Florida Uniform Disposition of Community Property Rights at Death Act.

A community property trust is not unenforceable on the grounds that the spouses did not have separate counsel.

Impact of Divorce on Wills and Trusts

The bill amends the Probate Code at s. 732.507, F.S., to provide that a former spouse is considered, for estate purposes, to have died on the date of the divorce. The date the will was signed does not affect this legal fiction. The bill amends the Trust Code at s. 736.1105, F.S., to clarify the same result applies to a revocable trust. These changes apply to estates and trusts of decedents who die on or after the effective date of the bill, regardless of when the trust or will was signed. The effective date of the bill for purposes of the changes to these two sections is upon becoming law.

The similar statute on beneficiaries of certain other financial instruments is not modified by this bill as the same result is clear in the text.

Depository Accounts in Probate

The bill amends s. 69.031, F.S., to allow, in probate proceedings where the court has required a depository account, the personal representative of an estate, or other officer appointed to hold property of the estate, the option at any time to post a surety bond instead. The bond must be for value of the personal property, or other reasonable sum set by the probate court. The bill amends s. 744.3679, F.S., to conform. The change to depository accounts is effective upon becoming law.

Liability of Directors, Officers and Employees

The bill amends s. 736.1008, F.S., to provide that the limitations periods applicable to a trustee also apply to a claim against a director, officer, or employee of the trustee. Additionally, the limitations periods of that statute also apply to claims against a trust director and to a director, officer, or employee of a trust director.

Homestead Property in a Trust

The bill creates s. 736.1109, F.S., to create homestead protections in the Trust Code consistent with those applicable to the Probate Code and consistent with the state constitutional homestead protections. Accordingly, as to a revocable trust, or a trust with testamentary effect:

- Like in wills, if a trust tries to devise homestead in violation of the constitutional limits, the trust provision is void and the property is subject to the Probate Code statute regarding this violation of the homestead provision.¹⁶
- Like in wills, a general power of sale or general direction to pay debts in the trust instrument does not cause loss of the carry-over protection from forced sale by creditors.

¹⁶ Section 732.401, F.S. Under that section, upon violation of the homestead limitation on devise, the property goes to the surviving spouse if there are no descendants. If there are surviving descendants, the surviving spouse gets a life estate in homestead and the remainder is distributed to the descendants. In lieu of a life estate, the surviving spouse may elect a 50 percent share in the property.

- Unlike wills, where a trust directs sale of property that would otherwise be protected homestead, title to the property remains in the name of the trustee.
- These provisions are “intended to clarify existing law” and thus apply retroactively and in the future.

The bill also amends s. 736.0201, F.S., a part of the trust law, to provide that a probate court may determine the homestead status of real property held in a revocable trust at the time of death.

Other Changes

The bill amends s. 736.0603, F.S., to add that the trustee of a revocable trust may follow the direction of the settlor that is contrary to the terms of the trust. This is subject to the statutory requirements of formality should the direction involve real property or testamentary disposition,¹⁷ and the statutory requirement that a revocation be according to the terms of the trust.¹⁸ This addition appears to reflect current law.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁷ Section 736.0403(2), F.S.

¹⁸ Section 736.0602(3)(a), F.S.

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: 69.031, 732.507, 736.0103, 736.0105, 736.0201, 736.0603, 736.0703, 736.1008, 736.1017, 736.1105, 736.0802, 736.08125, 738.104, and 744.3679.

This bill creates the following sections of the Florida Statutes: 736.1109, 736.1401, 736.1416, 736.1403, 736.1405, 736.1406, 736.1407, 736.1408, 736.1409, 736.141, 736.1411, 736.1412, 736.1413, 736.1414, 736.1415, 736.1501, 736.1502, 736.1503, 736.1504, 736.1505, 736.1506, 736.1507, 736.1508, 736.1509, 736.151, 736.1511, and 736.1512.

This bill repeals section 736.0808, Florida Statutes.

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

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

CS by Judiciary Committee on March 22, 2021:

The portion of the bill regarding directed trusts was amended to add short descriptions for many of the cross-referenced statutes which may make that portion of the Trust Code easier for practitioners to use.

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 Berman

31-00557A-21

20211070__

A bill to be entitled

An act relating to estates and trusts; amending s. 69.031, F.S.; requiring the court to allow an officer to elect to post and maintain a certain bond; requiring the court to vacate or terminate an order under certain circumstances; making technical changes; amending s. 732.507, F.S.; providing that certain provisions of a will are void upon dissolution of marriage; specifying when dissolution of marriage occurs; providing applicability; amending s. 736.0103, F.S.; defining terms; revising the definition of the term "terms of a trust"; amending s. 736.0105, F.S.; revising the exceptions for when the terms of a trust do not prevail over provisions of the Florida Trust Code; amending s. 736.0201, F.S.; authorizing certain proceedings to determine the homestead status of real property owned by a trust to be filed in the probate proceeding for the settlor's estate; requiring that such proceedings be governed by the Florida Probate Rules; amending s. 736.0603, F.S.; transferring provisions that authorize a trustee to follow certain directions; amending s. 736.0703, F.S.; conforming provisions to changes made by the act; repealing s. 736.0808, F.S., relating to powers to direct; amending s. 736.1008, F.S.; specifying that certain claims barred against a trustee or trust director are also barred against certain persons acting for that trustee; conforming provisions to changes made by the act; amending s. 736.1017, F.S.; revising the

31-00557A-21

20211070__

information required to be included in a certification of trust; amending s. 736.1105, F.S.; revising the effects that subsequent marriages, births, adoptions, or dissolutions of marriage have on a revocable trust; providing construction; providing applicability; creating s. 736.1109, F.S.; specifying how title passes for certain devisees of homesteads which violate the State Constitution; specifying that certain powers do not subject an interest in a protected homestead to certain claims; providing applicability; creating part XIV of chapter 736, F.S., entitled the "Florida Uniform Directed Trust Act"; creating s. 736.1401, F.S.; providing a short title; creating s. 736.1403, F.S.; providing applicability; providing for the validity of certain terms in a directed trust which designate principal places of administration; creating s. 736.1405, F.S.; defining the term "power of appointment"; providing applicability; specifying the types of powers granted to persons other than trustees; creating s. 736.1406, F.S.; authorizing the terms of a trust to grant a power of direction to a trust director; specifying the powers included in a power of direction; creating s. 736.1407, F.S.; providing for limitations on trust directors; creating s. 736.1408, F.S.; providing duties and liabilities for trust directors; creating s. 736.1409, F.S.; providing duties and liabilities for directed trustees; creating s. 736.141, F.S.; requiring a trustee to provide certain information to a trust

31-00557A-21

20211070__

59 director; requiring a trust director to provide
60 certain information to a trustee or another trust
61 director and a qualified beneficiary; providing that a
62 trustee or a trust director acting in reliance on
63 certain information is not liable for a breach of
64 trust in certain circumstances; creating s. 736.1411,
65 F.S.; specifying that trustees and trust directors do
66 not have a duty to monitor, inform, or advise
67 specified persons under certain circumstances;
68 creating s. 736.1412, F.S.; transferring provisions
69 relating to the appointment of trustees; creating s.
70 736.1413, F.S.; providing limitations on actions
71 against trust directors; creating s. 736.1414, F.S.;
72 authorizing trust directors to assert specified
73 defenses in certain actions; creating s. 736.1415,
74 F.S.; specifying that a trust director submits to
75 specified personal jurisdiction by accepting
76 appointment as a trust director; providing
77 construction; creating s. 736.1416, F.S.; requiring
78 trust directors to be considered a trustee for certain
79 purposes; authorizing certain persons to make a
80 specified written demand to accept or confirm prior
81 acceptance of trust directorships; creating part XV of
82 chapter 736, F.S., entitled the "Community Property
83 Trust Act"; creating s. 736.1501, F.S.; providing a
84 short title; creating s. 736.1502, F.S.; defining
85 terms; creating s. 736.1503, F.S.; providing that an
86 arrangement is a community property trust in certain
87 circumstances; creating s. 736.1504, F.S.; authorizing

31-00557A-21

20211070__

88 settlor spouses to agree upon certain terms in an
89 agreement establishing a community property trust;
90 specifying when a community property trust may be
91 amended or revoked; specifying qualified beneficiaries
92 of community property trusts; creating s. 736.1505,
93 F.S.; providing that settlor spouses may classify any
94 property as community property by transferring that
95 property to a community property trust regardless of
96 domicile; providing for enforceability and duration of
97 a community property trust; providing that the right
98 to manage and control certain property is determined
99 by the terms of the trust agreement; providing the
100 effect of distributions from a community property
101 trust; creating s. 736.1506, F.S.; providing for the
102 satisfaction of obligations incurred by one or both
103 spouses from a community property trust; creating s.
104 736.1507, F.S.; providing for the disposition or
105 distribution of certain property upon the death of a
106 spouse; creating s. 736.1508, F.S.; providing for the
107 termination of a community property trust upon
108 dissolution of marriage; creating s. 736.1509, F.S.;
109 providing that a community property trust does not
110 adversely affect certain rights of a child; creating
111 s. 736.151, F.S.; providing that certain property held
112 in a community property trust qualifies as homestead
113 property; creating s. 736.1511, F.S.; providing for
114 the application of the Internal Revenue Code to a
115 community property trust; creating s. 736.1512, F.S.;
116 providing that a community property trust is not

31-00557A-21

20211070__

enforceable in certain circumstances; amending ss.
736.0802, 736.08125, and 738.104, F.S.; conforming
cross-references; amending s. 744.3679, F.S.;
conforming a provision to changes made by the act;
providing a directive to the Division of Law Revision;
providing for severability; providing effective dates.

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

Section 1. Effective upon this act becoming a law, section
69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for property
~~assets~~ in hands of guardians, curators, administrators,
trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court
having jurisdiction of any estate in process of administration
by any guardian, curator, executor, administrator, trustee,
receiver, or other officer, because the size of the bond
required of the officer is burdensome or for other cause, the
court may order part or all of the personal property ~~assets~~ of
the estate placed with a bank, trust company, or savings and
loan association (which savings and loan association is a member
of the Federal Savings and Loan Insurance Corporation and doing
business in this state) designated by the court, consideration
being given to any bank, trust company or savings and loan
association proposed by the officer. Notwithstanding the
foregoing, in probate proceedings and in accordance with s.
733.402, the court shall allow the officer at any time to elect
to post and maintain bond for the value of the personal

31-00557A-21

20211070__

146 property, or such other reasonable amount determined by the
147 court, whereupon the court shall vacate or terminate any order
148 establishing the depository. When the property is ~~assets are~~
149 placed with the designated financial institution, it shall file
150 a receipt therefor in the name of the estate and give the
151 officer a copy. Such receipt shall acknowledge the property
152 ~~assets~~ received by the financial institution. All interest,
153 dividends, principal and other debts collected by the financial
154 institution on account thereof shall be held by the financial
155 institution in safekeeping, subject to the instructions of the
156 officer authorized by order of the court directed to the
157 financial institution.

158 (2) Accountings shall be made to the officer at reasonably
159 frequent intervals. After the receipt for the original property
160 ~~assets~~ has been filed by the financial institution, the court
161 shall waive the bond given or to be given or reduce it so that
162 it shall apply only to the estate remaining in the hands of the
163 officer, whichever the court deems proper.

164 (3) When the court has ordered any property ~~assets~~ of an
165 estate to be placed with a designated financial institution, any
166 person or corporation having possession or control of any of the
167 property ~~assets~~, or owing interest, dividends, principal or
168 other debts on account thereof, shall pay and deliver such
169 property ~~assets~~, interest, dividends, principal and other debts
170 to the financial institution on its demand whether the officer
171 has duly qualified or not, and the receipt of the financial
172 institution relieves the person or corporation from further
173 responsibility therefor.

174 (4) Any bank, trust company, or savings and loan

31-00557A-21

20211070__

175 association which is designated under this section, may accept
176 or reject the designation in any instance, and shall file its
177 acceptance or rejection with the court making the designation
178 within 15 days after actual knowledge of the designation comes
179 to the attention of the financial institution, and if the
180 financial institution accepts, it shall be allowed a reasonable
181 amount for its services and expenses which the court may allow
182 as a charge against the property assets placed with the
183 financial institution.

184 Section 2. Effective upon this act becoming a law, section
185 732.507, Florida Statutes, is amended to read:

186 732.507 Effect of subsequent marriage, birth, adoption, or
187 dissolution of marriage.—

188 (1) Neither subsequent marriage, birth, nor adoption of
189 descendants shall revoke the prior will of any person, but the
190 pretermitted child or spouse shall inherit as set forth in ss.
191 732.301 and 732.302, regardless of the prior will.

192 (2) Any provision of a will ~~executed by a married person~~
193 that affects the testator's spouse ~~is of that person shall~~
194 ~~become~~ void upon dissolution of the marriage of the testator and
195 the spouse, whether the marriage occurred before or after the
196 execution of such will. Upon dissolution of marriage ~~the divorce~~
197 ~~of that person or upon the dissolution or annulment of the~~
198 ~~marriage. After the dissolution, divorce, or annulment, the will~~
199 shall be ~~administered and~~ construed as if the ~~former~~ spouse ~~had~~
200 died at the time of the dissolution of marriage, divorce, or
201 ~~annulment of the marriage, unless the will or the dissolution or~~
202 ~~divorce judgment expressly provides otherwise.~~

203 (a) Dissolution of marriage occurs at the time the

31-00557A-21

20211070__

204 decedent's marriage is judicially dissolved or declared invalid
205 by court order.

206 (b) This subsection does not invalidate a provision of a
207 will:

208 1. Executed by the testator after the dissolution of the
209 marriage;

210 2. If there is a specific intention to the contrary stated
211 in the will; or

212 3. If the dissolution of marriage judgment expressly
213 provides otherwise.

214 (3) This section applies to wills of decedents who die on
215 or after the effective date of this section.

216 Section 3. Present subsections (6) through (13), (14)
217 through (21), and (22) and (23) of section 736.0103, Florida
218 Statutes, are redesignated as subsections (8) through (15), (17)
219 through (24), and (26) and (27), respectively, new subsections
220 (6), (7), and (16) and subsection (25) are added to that
221 section, and present subsection (21) of that section is amended,
222 to read:

223 736.0103 Definitions.—Unless the context otherwise
224 requires, in this code:

225 (6) "Directed trust" means a trust for which the terms of
226 the trust grant a power of direction.

227 (7) "Directed trustee" means a trustee that is subject to a
228 trust director's power of direction.

229 (16) "Power of direction" means a power over a trust
230 granted to a person by the terms of the trust to the extent the
231 power is exercisable while the person is not serving as a
232 trustee. The term includes a power over the investment,

31-00557A-21

20211070__

management, or distribution of trust property, a power to amend a trust instrument or terminate a trust, or a power over other matters of trust administration. The term excludes the powers listed in s. 736.1405(2).

(24) ~~(21)~~ "Terms of a trust" means:

(a) Except as otherwise provided in paragraph (b), the manifestation of the settlor's intent regarding a trust's provisions as:

1. Expressed in the trust instrument; or
2. Established by other evidence that would be admissible in a judicial proceeding; or

(b) The trust's provisions as established, determined, or amended by:

1. A trustee or trust director in accordance with applicable law;
2. Court order; or
3. A nonjudicial settlement agreement under s. 736.0111 ~~the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.~~

(25) "Trust director" means a person who is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

Section 4. Paragraph (b) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

31-00557A-21

20211070__

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(b) Subject to ss. 736.1409, 736.1411, and 736.1412, the duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Section 5. Subsection (1) of section 736.0201, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

736.0201 Role of court in trust proceedings.—

(1) Except as provided in subsections (5), ~~and~~ (6), and (7) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.

(7) A proceeding to determine the homestead status of real property owned by a trust may be filed in the probate proceeding for the settlor's estate if the settlor was treated as the owner of the interest held in the trust under s. 732.4015. The proceeding shall be governed by the Florida Probate Rules.

Section 6. Subsection (3) is added to section 736.0603, Florida Statutes, to read:

736.0603 Settlor's powers; powers of withdrawal.—

(3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a direction of the settlor that is contrary to the terms of the trust while a trust is revocable.

Section 7. Subsections (3), (7), and (9) of section 736.0703, Florida Statutes, are amended to read:

736.0703 Cotrustees.—

31-00557A-21

20211070__

291 (3) Subject to s. 736.1412, a cotrustee must participate in
292 the performance of a trustee's function unless the cotrustee is
293 unavailable to perform the function because of absence, illness,
294 disqualification under other provision of law, or other
295 temporary incapacity or the cotrustee has properly delegated the
296 performance of the function to another cotrustee.

297 (7) Except as otherwise provided in s. 736.1412 subsection
298 ~~(9)~~, each cotrustee shall exercise reasonable care to:

299 (a) Prevent a cotrustee from committing a breach of trust.

300 (b) Compel a cotrustee to redress a breach of trust.

301 ~~(9) If the terms of a trust provide for the appointment of~~
302 ~~more than one trustee but confer upon one or more of the~~
303 ~~trustees, to the exclusion of the others, the power to direct or~~
304 ~~prevent specified actions of the trustees, the excluded trustees~~
305 ~~shall act in accordance with the exercise of the power. Except~~
306 ~~in cases of willful misconduct on the part of the excluded~~
307 ~~trustee, an excluded trustee is not liable, individually or as a~~
308 ~~fiduciary, for any consequence that results from compliance with~~
309 ~~the exercise of the power. An excluded trustee does not have a~~
310 ~~duty or an obligation to review, inquire, investigate, or make~~
311 ~~recommendations or evaluations with respect to the exercise of~~
312 ~~the power. The trustee or trustees having the power to direct or~~
313 ~~prevent actions of the excluded trustees shall be liable to the~~
314 ~~beneficiaries with respect to the exercise of the power as if~~
315 ~~the excluded trustees were not in office and shall have the~~
316 ~~exclusive obligation to account to and to defend any action~~
317 ~~brought by the beneficiaries with respect to the exercise of the~~
318 ~~power. The provisions of s. 736.0808(2) do not apply if the~~
319 ~~person entrusted with the power to direct the actions of the~~

31-00557A-21

20211070__

~~excluded trustee is also a cotrustee.~~

Section 8. Section 736.0808, Florida Statutes, is repealed.

Section 9. Present subsection (7) of section 736.1008, Florida Statutes, is redesignated as subsection (8), a new subsection (7) is added to that section, and paragraph (a) of subsection (1), subsection (2), and paragraphs (a) and (c) of subsection (4) of that section are amended, to read:

736.1008 Limitations on proceedings against trustees.—

(1) Except as provided in subsection (2), all claims by a beneficiary against a trustee for breach of trust are barred as provided in chapter 95 as to:

(a) All matters adequately disclosed in a trust disclosure document issued by the trustee or a trust director, with the limitations period beginning on the date of receipt of adequate disclosure.

(2) Unless sooner barred by adjudication, consent, or limitations, a beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt from the trustee or a trust director of the trust disclosure document or a limitation notice that applies to that disclosure document, whichever is received later.

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

(a) "Trust disclosure document" means a trust accounting or any other written report of the trustee or a trust director. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the

31-00557A-21

20211070__

349 existence of a claim with respect to that matter.

350 (c) "Limitation notice" means a written statement of the
351 trustee or a trust director that an action by a beneficiary
352 ~~against the trustee~~ for breach of trust based on any matter
353 adequately disclosed in a trust disclosure document may be
354 barred unless the action is commenced within 6 months after
355 receipt of the trust disclosure document or receipt of a
356 limitation notice that applies to that trust disclosure
357 document, whichever is later. A limitation notice may but is not
358 required to be in the following form: "An action for breach of
359 trust based on matters disclosed in a trust accounting or other
360 written report of the trustee or a trust director may be subject
361 to a 6-month statute of limitations from the receipt of the
362 trust accounting or other written report. If you have questions,
363 please consult your attorney."

364 (7) Any claim barred against a trustee or trust director
365 under this section is also barred against the directors,
366 officers, and employees acting for the trustee.

367 Section 10. Present paragraphs (e), (f), and (g) of
368 subsection (1) of section 736.1017, Florida Statutes, are
369 redesignated as paragraphs (f), (g), and (h), respectively, and
370 a new paragraph (e) is added to that subsection, to read:

371 736.1017 Certification of trust.—

372 (1) Instead of furnishing a copy of the trust instrument to
373 a person other than a beneficiary, the trustee may furnish to
374 the person a certification of trust containing the following
375 information:

376 (e) Whether the trust contains any powers of direction, and
377 if so, the identity of the current trust directors, the trustee

31-00557A-21

20211070__

378 powers subject to a power of direction, and whether the trust
379 directors have directed or authorized the trustee to engage in
380 the proposed transaction for which the certification of trust
381 was issued.

382 Section 11. Effective upon this act becoming a law, section
383 736.1105, Florida Statutes, is amended to read:

384 (Substantial rewording of section. See
385 s. 736.1105, F.S., for present text.)

386 736.1105 Effect of subsequent marriage, birth, adoption, or
387 dissolution of marriage.—

388 (1) Neither subsequent marriage, birth, nor adoption of
389 descendants shall revoke the revocable trust of any person.

390 (2) Any provision of a revocable trust that affects the
391 settlor's spouse is void upon dissolution of the marriage of the
392 settlor and the spouse, whether the marriage occurred before or
393 after the execution of such revocable trust. Upon dissolution of
394 marriage, the revocable trust shall be construed as if the
395 spouse had died at the time of the dissolution of marriage.

396 (a) Dissolution of marriage occurs at the time the
397 decedent's marriage is judicially dissolved or declared invalid
398 by court order.

399 (b) This subsection does not invalidate a provision of a
400 revocable trust:

401 1. Executed by the settlor after the dissolution of the
402 marriage;

403 2. If there is a specific intention to the contrary stated
404 in the revocable trust; or

405 3. If the dissolution of marriage judgment expressly
406 provides otherwise.

31-00557A-21

20211070__

407 (3) This section applies to revocable trusts of decedents
408 who die on or after the effective date of this section.

409 Section 12. Section 736.1109, Florida Statutes, is created
410 to read:

411 736.1109 Testamentary and revocable trusts; homestead
412 protections.—

413 (1) If a devise of homestead under a trust violates the
414 limitations on the devise of homestead in s. 4(c), Art. X of the
415 State Constitution, title shall pass as provided in s. 732.401
416 at the moment of death.

417 (2) A power of sale or general direction to pay debts,
418 expenses and claims within the trust instrument does not subject
419 an interest in the protected homestead to the claims of
420 decedent's creditors, expenses of administration, and
421 obligations of the decedent's estate as provided in s.
422 736.05053.

423 (3) If a trust directs the sale of property that would
424 otherwise qualify as protected homestead, and the property is
425 not subject to the constitutional limitations on the devise of
426 homestead under the State Constitution, title shall remain
427 vested in the trustee and subject to the provisions of the
428 trust.

429 (4) This section applies only to trusts described in s.
430 733.707(3) and to testamentary trusts.

431 (5) This section is intended to clarify existing law and
432 applies to the administration of trusts and estates of decedents
433 who die before, on, or after July 1, 2021.

434 Section 13. Part XIV of chapter 736, Florida Statutes,
435 consisting of ss. 736.1401-736.1416, Florida Statutes, is

31-00557A-21

20211070__

created and entitled the "Florida Uniform Directed Trust Act."

Section 14. Section 736.1401, Florida Statutes, is created to read:

736.1401 Short title.—This part may be cited as the "Florida Uniform Directed Trust Act."

Section 15. Section 736.1403, Florida Statutes, is created to read:

736.1403 Application; principal place of administration.—

(1) This part applies to a trust subject to this chapter, whenever created, that has its principal place of administration in the state, subject to the following rules:

(a) If the trust was created before July 1, 2021, this part applies only to a decision or action occurring on or after July 1, 2021.

(b) If the principal place of administration of the trust is changed to the state on or after July 1, 2021, this part applies only to a decision or action occurring on or after the date of the change.

(2) In addition to the provisions of s. 736.0108, in a directed trust, terms of the trust that designate the principal place of administration of the trust in the state are valid and controlling if a trust director's principal place of business is located in or a trust director is a resident of the state.

Section 16. Section 736.1405, Florida Statutes, is created to read:

736.1405 Exclusions.—

(1) As used in this section, the term "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership

31-00557A-21

20211070__

465 interest in or another power of appointment over trust property.

466 (2) Unless the terms of a trust expressly provide otherwise
467 by specific reference to this part, section, or paragraph, this
468 part does not apply to:

469 (a) A power of appointment;

470 (b) A power to appoint or remove a trustee or trust
471 director;

472 (c) A power of a settlor over a trust while the trust is
473 revocable by that settlor;

474 (d) A power of a beneficiary over a trust to the extent the
475 exercise or nonexercise of the power affects the beneficial
476 interest of:

477 1. The beneficiary; or

478 2. Another beneficiary represented by the beneficiary under
479 ss. 736.0301-736.0305 with respect to the exercise or
480 nonexercise of the power;

481 (e) A power over a trust if the terms of the trust provide
482 that the power is held in a nonfiduciary capacity; and

483 1. The power must be held in a nonfiduciary capacity to
484 achieve the settlor's tax objectives under the United States
485 Internal Revenue Code of 1986, as amended, and regulations
486 issued thereunder, as amended; or

487 2. It is a power to reimburse the settlor for all or a part
488 of the settlor's income tax liabilities attributable to the
489 income of the trust; or

490 (f) A power to add or to release a power under the trust
491 instrument if the power subject to addition or release causes
492 the settlor to be treated as the owner of all or any portion of
493 the trust for federal income tax purposes.

31-00557A-21

20211070__

494 (3) Unless the terms of a trust provide otherwise, a power
495 granted to a person other than a trustee:

496 (a) To designate a recipient of an ownership interest in
497 trust property, including a power to terminate a trust, is a
498 power of appointment and not a power of direction.

499 (b) To create, modify, or terminate a power of appointment
500 is a power of direction and not a power of appointment, except a
501 power to create a power of appointment that is an element of a
502 broad power to affect an ownership interest in trust property
503 beyond the mere creation of a power of appointment, such as a
504 power to appoint trust property in further trust, is a power of
505 appointment and not a power of direction.

506 Section 17. Section 736.1406, Florida Statutes, is created
507 to read:

508 736.1406 Power of trust director.—

509 (1) Subject to s. 736.1407, the terms of a trust may grant
510 a power of direction to a trust director.

511 (2) A power of direction includes only those powers granted
512 by the terms of the trust.

513 (3) Unless the terms of a trust provide otherwise:

514 (a) A trust director may exercise any further power
515 appropriate to the exercise or nonexercise of a power of
516 direction granted to the trust director under subsection (1);
517 and

518 (b) Trust directors with joint powers must act by majority
519 decision.

520 Section 18. Section 736.1407, Florida Statutes, is created
521 to read:

522 736.1407 Limitations on trust director.—A trust director is

31-00557A-21

20211070__

subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under s. 736.1406(3) (a) regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of s. 1917 of the Social Security Act, 42 U.S.C. s. 1396p(d) (4) (A), as amended, and regulations issued thereunder, as amended.

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General.

Section 19. Section 736.1408, Florida Statutes, is created to read:

736.1408 Duty and liability of trust director.—

(1) Subject to subsection (2), with respect to a power of direction or further power under s. 736.1406(3) (a):

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

1. If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

2. If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

(b) The terms of the trust may vary the trust director's duty or liability to the same extent the terms of the trust may vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care

31-00557A-21

20211070__

552 in the ordinary course of the trust director's business or
553 practice of a profession, to the extent the trust director acts
554 in that capacity the trust director has no duty or liability
555 under this part.

556 (3) The terms of a trust may impose a duty or liability on
557 a trust director in addition to the duties and liabilities under
558 this section.

559 Section 20. Section 736.1409, Florida Statutes, is created
560 to read:

561 736.1409 Duty and liability of directed trustee.—

562 (1) Subject to subsection (2), a directed trustee shall
563 take reasonable action to comply with a trust director's
564 exercise or nonexercise of a power of direction or further power
565 under s. 736.1406(3) (a) and the trustee is not liable for such
566 reasonable action.

567 (2) A directed trustee may not comply with a trust
568 director's exercise or nonexercise of a power of direction or
569 further power under s. 736.1406(3) (a) to the extent that by
570 complying the trustee would engage in willful misconduct.

571 (3) Before complying with a trust director's exercise of a
572 power of direction, the directed trustee shall determine whether
573 or not the exercise is within the scope of the trust director's
574 power of direction. The exercise of a power of direction is not
575 outside the scope of a trust director's power of direction
576 merely because the exercise constitutes or may constitute a
577 breach of trust.

578 (4) An exercise of a power of direction under which a trust
579 director may release a trustee or another trust director from
580 liability for breach of trust is not effective if:

31-00557A-21

20211070__

581 (a) The breach involved the trustee's or other director's
582 willful misconduct;

583 (b) The release was induced by improper conduct of the
584 trustee or other director in procuring the release; or

585 (c) At the time of the release, the trust director did not
586 know the material facts relating to the breach.

587 (5) A directed trustee that has reasonable doubt about its
588 duty under this section may apply to the court for instructions,
589 with attorney fees and costs to be paid from assets of the trust
590 as provided in this code.

591 (6) The terms of a trust may impose a duty or liability on
592 a directed trustee in addition to the duties and liabilities
593 under this part.

594 Section 21. Section 736.141, Florida Statutes, is created
595 to read:

596 736.141 Duty to provide information.—

597 (1) Subject to s. 736.1411, a trustee shall provide
598 information to a trust director to the extent the information is
599 reasonably related to the powers or duties of the trust
600 director.

601 (2) Subject to s. 736.1411, a trust director shall provide
602 information to a trustee or another trust director to the extent
603 the information is reasonably related to the powers or duties of
604 the trustee or other trust director.

605 (3) A trustee that acts in reliance on information provided
606 by a trust director is not liable for a breach of trust to the
607 extent the breach resulted from the reliance, unless by so
608 acting the trustee engages in willful misconduct.

609 (4) A trust director that acts in reliance on information

31-00557A-21

20211070__

provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

(5) A trust director shall provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary to the extent the information is reasonably related to the powers or duties of the trust director.

Section 22. Section 736.1411, Florida Statutes, is created to read:

736.1411 No duty to monitor, inform, or advise.—

(1) Notwithstanding s. 736.1409(1), unless the terms of a trust provide otherwise:

(a) A trustee does not have a duty to:

1. Monitor a trust director; or

2. Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director.

(b) By taking an action described in paragraph (a), a trustee does not assume the duty excluded by paragraph (a).

(2) Notwithstanding s. 736.1408(1), unless the terms of a trust provide otherwise:

(a) A trust director does not have a duty to:

1. Monitor a trustee or another trust director; or

2. Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director.

31-00557A-21

20211070__

639 (b) By taking an action described in paragraph (a), a trust
640 director does not assume the duty excluded by paragraph (a).

641 Section 23. Section 736.1412, Florida Statutes, is created
642 to read:

643 736.1412 Application to cotrustee.—

644 (1) The terms of a trust may provide for the appointment of
645 more than one trustee but confer upon one or more of the
646 trustees, to the exclusion of the others, the power to direct or
647 prevent specified actions of the trustees.

648 (2) The excluded trustees shall act in accordance with the
649 exercise of the power in the manner, and with the same duty and
650 liability, as directed trustees with respect to a trust
651 director's power of direction under ss. 736.1409, 736.141, and
652 736.1411.

653 (3) The trustee or trustees having the power to direct or
654 prevent actions of the excluded trustees shall be liable to the
655 beneficiaries with respect to the exercise of the power as if
656 the excluded trustees were not in office and shall have the
657 exclusive obligation to account to and to defend any action
658 brought by the beneficiaries with respect to the exercise of the
659 power.

660 Section 24. Section 736.1413, Florida Statutes, is created
661 to read:

662 736.1413 Limitation of action against trust director.—

663 (1) An action against a trust director for breach of trust
664 must be commenced within the same limitation period as under s.
665 736.1008 in an action for breach of trust against a trustee in a
666 like position and under similar circumstances.

667 (2) A trust accounting or any other written report of a

31-00557A-21

20211070__

trustee or a trust director has the same effect on the
limitation period for an action against a trust director for
breach of trust that such trust accounting or written report
would have under s. 736.1008 in an action for breach of trust
against a trustee in a like position and under similar
circumstances.

Section 25. Section 736.1414, Florida Statutes, is created
to read:

736.1414 Defenses in action against trust director.—In an
action against a trust director for breach of trust, the trust
director may assert the same defenses a trustee in a like
position and under similar circumstances could assert in an
action for breach of trust against the trustee.

Section 26. Section 736.1415, Florida Statutes, is created
to read:

736.1415 Jurisdiction over trust director.—

(1) By accepting appointment as a trust director of a trust
subject to this part, the trust director submits to the personal
jurisdiction of the courts of the state regarding any matter
related to a power or duty of the trust director.

(2) This section does not preclude other methods of
obtaining jurisdiction over a trust director.

Section 27. Section 736.1416, Florida Statutes, is created
to read:

736.1416 Office of trust director.—

(1) Unless the terms of a trust provide otherwise, a trust
director shall be considered a trustee for purposes of the
following:

(a) Role of court under s. 736.0201.

31-00557A-21

20211070__

697 (b) Proceedings for review of employment of agents and
698 review of compensation of trustee and employees of a trust under
699 s. 736.0206.

700 (c) Representation by holder of power of appointment under
701 s. 736.0302(4).

702 (d) Designated representative under s. 736.0306(2).

703 (e) Requirements for creation of a trust under s.
704 736.0402(3).

705 (f) As to allowing application by the trust director for
706 judicial modification, construction, or termination under s.
707 736.04113, s. 736.04114, s. 736.04115, or s. 736.0414(2) if the
708 trust director is so authorized by the terms of the trust.

709 (g) Discretionary trusts and the effect of a standard under
710 s. 736.0504.

711 (h) Creditors' claims against settlor under s.
712 736.0505(1)(c).

713 (i) Trustee's duty to pay expenses and obligations of a
714 settlor's estate under s. 736.05053(4).

715 (j) Acceptance or declination under s. 736.0701.

716 (k) Giving of bond to secure performance under s. 736.0702.

717 (l) Vacancy and appointment of successor under s. 736.0704.

718 (m) Resignation under s. 736.0705.

719 (n) Removal under s. 736.0706, but not to give the trust
720 director the power to request removal of a trustee.

721 (o) Reasonable compensation under s. 736.0708.

722 (p) Reimbursement of expenses under s. 736.0709.

723 (q) Payment of costs or attorney fees under s. 736.0802(10)
724 if the trust director has a power of direction or, if the trust
725 director has a further power to direct, the payment of such

31-00557A-21

20211070__

costs or attorney fees under s. 736.1406(2) or (3)(a).

(r) Discretionary power and tax savings provisions under s. 736.0814.

(s) Administration pending outcome of contest or other proceeding under s. 736.08165.

(t) Applicability of chapter 518 under s. 736.0901.

(u) Nonapplication of prudent investor rule under s. 736.0902.

(v) Remedies for breach of trust under s. 736.1001.

(w) Damages for breach of trust under s. 736.1002.

(x) Damages in absence of breach under s. 736.1003.

(y) Attorney fees and costs under s. 736.1004.

(z) Trustee's attorney fees under s. 736.1007(5), (6), and (7).

(aa) Reliance on a trust instrument under s. 736.1009.

(bb) Events affecting administration under s. 736.1010.

(cc) Exculpation under s. 736.1011.

(dd) Beneficiary's consent, release, or ratification under s. 736.1012.

(ee) Limitations on actions against certain trusts under s. 736.1014.

(2) If a person has not accepted a trust directorship under the terms of the trust or under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship in writing. A written acceptance, written

31-00557A-21

20211070__

acknowledgment of prior acceptance, or written declination of the trust directorship shall be delivered by the designated trust director within 60 days after receipt of such demand to all trustees, qualified beneficiaries, and the settlor if living.

Section 28. Part XV of chapter 736, Florida Statutes, consisting of ss. 736.1501-736.1512, Florida Statutes, is created and entitled the "Community Property Trust Act."

Section 29. Section 736.1501, Florida Statutes, is created to read:

736.1501 Short title.—This part may be cited as the "Community Property Trust Act."

Section 30. Section 736.1502, Florida Statutes, is created to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.

(2) "Community property trust" means an express trust that complies with s. 736.1503 and is created on or after July 1, 2021.

(3) "Decree" means a judgment or other order of a court of competent jurisdiction.

(4) "Dissolution" means either:

31-00557A-21

20211070__

784 (a) Termination of a marriage by a decree of dissolution,
785 divorce, annulment, or declaration of invalidity; or

786 (b) Entry of a decree of legal separation maintenance.

787 (5) "During marriage" means a period that begins at
788 marriage and ends upon the dissolution of marriage or upon the
789 death of a spouse.

790 (6) "Qualified trustee" means either:

791 (a) A natural person who is a resident of the state; or

792 (b) A company authorized to act as a trustee in the state.

793
794 A qualified trustee's powers include, but are not limited to,
795 maintaining records for the trust on an exclusive or a
796 nonexclusive basis and preparing or arranging for the
797 preparation of, on an exclusive or a nonexclusive basis, any
798 income tax returns that must be filed by the trust.

799 (7) "Settlor spouses" means a married couple who
800 establishes a community property trust pursuant to this part.

801 Section 31. Section 736.1503, Florida Statutes, is created
802 to read:

803 736.1503 Requirements for community property trust.—An
804 arrangement is a community property trust if one or both settlor
805 spouses transfer property to a trust that:

806 (1) Expressly declares that the trust is a community
807 property trust within the meaning of this part.

808 (2) Has at least one trustee who is a qualified trustee,
809 provided that both spouses or either spouse also may be a
810 trustee.

811 (3) Is signed by both settlor spouses consistent with the
812 formalities required for the execution of a trust under this

31-00557A-21

20211070__

chapter.

(4) Contains substantially the following language in capital letters at the beginning of the community property trust agreement:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE.

Section 32. Section 736.1504, Florida Statutes, is created to read:

736.1504 Agreement establishing community property trust; amendments and revocation.—

(1) In the agreement establishing a community property trust, the settlor spouses may agree upon:

(a) The rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located.

(b) The management and control of the property transferred into the trust.

(c) The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence

31-00557A-21

20211070__

of another event, subject to ss. 736.1507 and 736.1508.

(d) Whether the trust is revocable or irrevocable.

(e) Any other matter that affects the property transferred to the trust and does not violate public policy or general law imposing a criminal penalty, or result in the property not being treated as community property under the laws of any jurisdiction.

(2) In the event of the death of a settlor spouse, the surviving spouse may amend a community property trust regarding the disposition of that spouse's one-half share of the community property, regardless of whether the agreement provides that the community property trust is irrevocable.

(3) A community property trust may be amended or revoked by the settlor spouses unless the agreement itself specifically provides that the community property trust is irrevocable.

(4) Notwithstanding any other provision of this code, the settlor spouses shall be deemed to be the only qualified beneficiaries of a community property trust until the death of one of the settlor spouses, regardless of whether the trust is revocable or irrevocable. After the death of one of the settlor spouses, the surviving spouse shall be deemed to be the only qualified beneficiary as to his or her share of the community property trust.

Section 33. Section 736.1505, Florida Statutes, is created to read:

736.1505 Classification of property as community property; enforcement; duration; management and control; effect of distributions.—

(1) Whether both, one, or neither is domiciled in the

31-00557A-21

20211070__

state, settlor spouses may classify any or all of their property as community property by transferring that property to a community property trust and providing in the trust that the property is community property pursuant to this part.

(2) A community property trust is enforceable without consideration.

(3) All property owned by a community property trust is community property under the laws of the state during the marriage of the settlor spouses.

(4) The right to manage and control property that is transferred to a community property trust is determined by the terms of the trust agreement.

(5) When property is distributed from a community property trust, the property shall no longer constitute community property within the meaning of this part, provided that community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 34. Section 736.1506, Florida Statutes, is created to read:

736.1506 Satisfaction of obligations.—Except as provided in s. 4, Art. X of the State Constitution:

(1) An obligation incurred by only one spouse before or during the marriage may be satisfied from that spouse's one-half share of a community property trust.

(2) An obligation incurred by both spouses during the marriage may be satisfied from a community property trust of the settlor spouses.

Section 35. Section 736.1507, Florida Statutes, is created

31-00557A-21

20211070__

to read:

736.1507 Death of a spouse.—Upon the death of a spouse, one-half of the aggregate value of the property held in a community property trust established by the settlor spouses reflects the share of the surviving spouse and is not subject to testamentary disposition by the decedent spouse or distribution under the laws of succession of the state. The other one-half of the value of that property reflects the share of the decedent spouse and is subject to testamentary disposition or distribution under the laws of succession of the state. Unless provided otherwise in the community property trust agreement, the trustee has the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non-pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods. The decedent's spouse's one-half share shall not be included in the elective estate.

Section 36. Section 736.1508, Florida Statutes, is created to read:

736.1508 Dissolution of marriage.—Upon the dissolution of the marriage of the settlor spouses, the community property trust shall terminate and the trustee shall distribute one-half of the trust assets to each spouse, with each spouse receiving one-half of each asset, unless otherwise agreed to in writing by both spouses. For purposes of this act, s. 61.075 does not apply to the disposition of the assets and liabilities held in a community property trust.

31-00557A-21

20211070__

929 Section 37. Section 736.1509, Florida Statutes, is created
930 to read:

931 736.1509 Right of child to support.—A community property
932 trust does not adversely affect the right of a child of the
933 settlor spouses to support that either spouse would be required
934 to give under the applicable laws of the settlor spouses' state
935 of domicile.

936 Section 38. Section 736.151, Florida Statutes, is created
937 to read:

938 736.151 Homestead property.—

939 (1) Property that is transferred to or acquired subject to
940 a community property trust may continue to qualify or may
941 initially qualify as the settlor spouses' homestead within the
942 meaning of s. 4(a)(1), Art. X of the State Constitution and for
943 all purposes of general law, provided that the property would
944 qualify as the settlor spouses' homestead if title was held in
945 one or both of the settlor spouses' individual names.

946 (2) The settlor spouses shall be deemed to have beneficial
947 title in equity to the homestead property held subject to a
948 community property trust for all purposes, including for
949 purposes of s. 196.031.

950 Section 39. Section 736.1511, Florida Statutes, is created
951 to read:

952 736.1511 Application of Internal Revenue Code; community
953 property classified by another jurisdiction.—For purposes of the
954 application of s. 1014(b)(6) of the Internal Revenue Code of
955 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a
956 community property trust is considered a trust established under
957 the community property laws of the state. Community property, as

31-00557A-21

20211070__

classified by a jurisdiction other than this state, which is transferred to a community property trust retains its character as community property while in the trust. If the trust is revoked and property is transferred on revocation of the trust, the community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 40. Section 736.1512, Florida Statutes, is created to read:

736.1512 Unenforceable trusts.—

(1) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that:

(a) The trust was unconscionable when made;

(b) The spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(c) Before execution of the community property trust agreement, the spouse against whom enforcement is sought:

1. Was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse.

2. Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided.

3. Did not have notice of the property or financial obligations of the other spouse.

(2) Whether a community property trust is unconscionable shall be determined by a court as a matter of law.

(3) A community property trust may not be deemed unenforceable because the settlor spouses did not have separate

31-00557A-21

20211070__

legal representation when executing the trust.

Section 41. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f)1. The trustee of a trust as defined in s. 731.201 may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

31-00557A-21

20211070__

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. "Majority of the qualified beneficiaries" means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. "Qualified investment instrument" means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

31-00557A-21

20211070__

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 42. Paragraph (a) of subsection (2) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

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

(a) "Eligible beneficiaries" means:

1. At the time the determination is made, if there are one or more beneficiaries as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

2. If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

Section 43. Paragraph (d) of subsection (9) of section 738.104, Florida Statutes, is amended to read:

738.104 Trustee's power to adjust.—

(9)

(d) For purposes of subsection (8) and this subsection, the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

b. If there is no beneficiary described in s. 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described

31-00557A-21

20211070__

in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

2. "Super majority of the eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 44. Subsection (1) of section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.—

(1) In a guardianship of property, when all property assets of the estate ~~is~~ are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits from a settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution;

31-00557A-21

20211070__

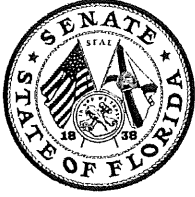
1103 and

1104 (b) A statement by the guardian under penalty of perjury
1105 that the guardian has custody and control of the ward's property
1106 as shown in the year-end statement.

1107 Section 45. The Division of Law Revision is directed to
1108 replace the phrase "the effective date of this section" wherever
1109 it occurs in this act with the date those sections become law.

1110 Section 46. If any provision of this act or the application
1111 thereof to any person or circumstance is held invalid, the
1112 invalidity does not affect other provisions or applications of
1113 this act which can be given effect without the invalid provision
1114 or application, and to this end the provisions of this act are
1115 severable.

1116 Section 47. Except as otherwise expressly provided in this
1117 act and except for this section, which shall take effect upon
1118 this act becoming a law, this act shall take effect July 1,
1119 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 11, 2021

I respectfully request that **Senate Bill #1070**, relating to Estates & Trusts, be placed on the:

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

A handwritten signature in cursive script that reads "Lori Berman" followed by a horizontal line.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Audrey Gibson, Vice Chair
Tom Cibula, Staff Director

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

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

1070

Bill Number (if applicable)

Topic Estates and Trusts (Judiciary)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 106 E. College Ave Suite 1200

Phone 850-999-4100

Street

Tallahassee

Florida

32301

Email medenfield@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

SB 1070

Bill Number (if applicable)

Topic Estates and Trusts

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd. Ste 201

Phone 850-509-8020

Street

Tallahassee

City

FL

State

32301

Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1108

INTRODUCER: Judiciary Committee and Senator Diaz

SUBJECT: Education

DATE: March 24, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1108 revises several areas of education law, primarily relating to graduation requirements and statewide standardized assessments. Specifically, the bill:

- Requires every school district, alternative school, and the Department of Juvenile Justice (DJJ) to offer either the SAT or ACT to every student in the 11th grade free of charge, subject to an appropriation for that purpose;
- Amends the civic literacy requirement for post-secondary education to include both an assessment *and* a course as opposed to one or the other;
- Creates a process to allow students in high school to earn the civic literacy requirement before enrolling in a public college or university in this state;
- Requires the statewide, standardized math and English learning assessments in grades 3 through 6 to be paper-based;
- Deletes obsolete language relating to prior statewide standardized assessments, and updates the assessment publication requirement in anticipation of the implementation of new state standards; and
- Authorizes the Department of Education (DOE) to hold certain intellectual property rights, including the right to patent, copyright, and trademark. This authority will allow the DOE to protect certain materials, such as state authored assessments, from being sold or distributed without authorization.

The DOE estimates that an appropriation of \$8 million would be necessary to provide funding for the SAT or ACT to be offered to each student in the 11th grade.

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

II. Present Situation:

Course and Testing Requirements

Florida Statewide Standardized Assessments

The Next Generation Sunshine State Standards (NGSSS) establish the core curricula, knowledge, and skills expected of K-12 students in Florida.¹ Standards may be adopted by rule through the State Board of Education.² In 2014, the Legislature amended Florida's assessment program to set forth the transition process from the prior statewide, standardized assessment (FCAT and FCAT 2.0) to the Florida Standards Assessment (FSA), including new English Language Arts (ELA) and mathematics assessments.³

The statewide standardized assessments measure the extent to which students have mastered the NGSSS.⁴ Students are required to take a standardized assessment in the following courses:

- English Language Arts grades 3-10;
- Mathematics grades 3-8;
- Science grades 5 and 8; and
- EOC assessments in Algebra 1, Biology 1, Civics, Geometry, and U.S. History.⁵

The Commissioner of Education (commissioner) assists and supports districts in measuring student performance on the state standards by maintaining a statewide item bank, facilitating the sharing of developed tests or test items among school districts, and providing technical assistance in best assessment practices.⁶ The commissioner may discontinue the item bank if he or she determines that district participation is insufficient for its sustainability.⁷

High School Course Requirements

As part of the 24 credits required to graduate from high school, students must earn three credits in social studies, including:

- One credit in United States History;
- Once credit in World History;
- One-half credit in economics; and
- One-half credit in the United States Government.⁸

¹ Section 1003.41(1), F.S.

² Section 1003.41(4), F.S.

³ Chapter 2014-39, Laws of Fla.

⁴ Section 1008.22(3), F.S.

⁵ Section 1008.22(3)(a) and (b), F.S.

⁶ Section 1008.22(6)(b), F.S.

⁷ *Id.*

⁸ Section 1003.4282(3)(d), F.S.

Collegiate Course Requirements

Each student graduating from a Florida College System or state university must demonstrate civic literacy.⁹ Currently, civic literacy may be accomplished by either passing an assessment or taking a course. Florida State University, for example, offers for students to enroll in certain courses for credit or obtain a score of 60 out of 100 on the U.S. Citizenship and Immigration Services Naturalization Test, which is offered free of charge.¹⁰

Intellectual Property

Under Florida Law:

An agency created by statute does not possess any inherent powers. Rather, the agency is limited to the powers that have been granted, either expressly or by necessary implication, by the statute that created the agency.¹¹

A state agency, for example, is not authorized to secure or hold a copyright, trademark, or patent absent specific statutory authority.¹² While the Department of State (DOS) has administrative authority to enforce any copyright, trademark, or patent *held* by the state,¹³ the DOS does not have unilateral authority to apply for or enforce intellectual property rights outside of a specific statutory authorization. For example, the following agencies have independent statutory authority to seek and enforce a copyright, trademark, or patent:

- The Department of Lottery;¹⁴
- The Department of Citrus;¹⁵
- The Department of Transportation;¹⁶
- Each water management district;¹⁷
- The Department of Law Enforcement;¹⁸
- The Florida Virtual School;¹⁹
- Each state university;²⁰ and
- Each Florida College System institution Board of Trustees.²¹

⁹ Section 1007.25(4), F.S.

¹⁰ Florida State University, Civic Literacy Requirement, *Ways to Meet the Requirement*, <https://liberalstudies.fsu.edu/civic-literacy.html> (last visited Mar. 18 2021).

¹¹ *Florida Virtual Sch. v. K12, Inc.*, 148 So. 3d 97, 99–100 (Fla. 2014) (citing *St. Regis Paper Co. v. State*, 237 So. 2d 797, 799 (Fla. 1st DCA 1970)). Additionally, “[a]n agency’s powers are limited to those conferred by the Legislature.” *Schindelar v. Fla. Unemployment Appeals Comm’n*, 31 So. 3d 903, 905 (Fla. 1st DCA 2010).

¹² *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. 2d DCA 2004) (“Florida’s Constitution and its statutes do not permit public records to be copyrighted unless the Legislature specifically states they can be.”) and Op. Att’y Gen. Fla. 00-13 (2000).

¹³ Sections 286.021 and 286.031, F.S.

¹⁴ Section 24.105(10), F.S.

¹⁵ Section 601.101, F.S.

¹⁶ Section 334.049(1), F.S.

¹⁷ Section 373.608, F.S.

¹⁸ Section 943.146, F.S.

¹⁹ Section 1002.37(2)(c), F.S.

²⁰ Section 1004.23, F.S.

²¹ Section 1004.726, F.S.

A state agency without such authority is ineligible to use these intellectual property rights.

III. Effect of Proposed Changes:

Section 1 grants the DOE the authority to hold patents, copyrights, trademarks, and service marks. Additionally, the DOE is authorized to take any actions necessary to enforce its rights in regard to any such patent trademark, copyright, or service mark.

The DOE must notify the DOS in writing when it secures a patent, trademark, copyright, or service mark. Except for educational materials and products, any proceeds received by the DOE from the exercise of such rights must be deposited in the DOE's Operating Trust Fund.

Under current law, students graduating from a postsecondary institution within the Florida College or State University System are required to demonstrate civic literacy. Generally, this may be accomplished through a test or a course on civic literacy. **Section 2** requires every student in high school to take a civic literacy assessment by the 2021-2022 school year. The assessment will be conducted through the currently required United State Government course, which is typically taught in the 11th or 12th grade. Students who earn a passing score on this assessment are exempt from the postsecondary civic literacy requirement.

The bill, therefore, will allow high school students to earn a portion of the civic literacy requirement while in high school as opposed to during post-secondary education. Under current law the assessment alone would meet the civic literacy requirement; however, **Section 3** amends the civil literacy requirement. Under current law, students are required to demonstrate civic literacy by passing an assessment or taking a course during post-secondary education. The bill requires that any student initially entering a Florida College Institution or state university during or after the 2021-2022 school year demonstrate civic literacy by passing an assessment *and* taking a course on civic literacy. Students in high school may complete the civic literacy requirement through an accelerated mechanism, such as dual enrollment.

The bill requires the State Board of Education and the Board of Governors to adopt rules and regulations to:

- Develop one or more new civic literacy courses that provide students, at a minimum, opportunities to engage synchronously in political discussion and civil debates with multiple points of view and master the ability to synthesize information to inform civic decision-making; and
- Approve civic literacy assessments that address competencies that include:
 - An understanding the basic principles of American democracy and how they are applied in our republican form of government;
 - An understanding of the U.S. Constitution;
 - Knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance; and
 - An understanding of landmark Supreme Court cases and their impact on law and society.

Section 4 amends s. 1008.212, F.S., to conform cross-references to changes made by the act.

Section 5. Subject to appropriation, the bill requires every school district, alternative school, and the DJJ to provide either the SAT or ACT to all 11th grade students, subject to appropriation. The DOE estimates that such an appropriation would require \$8 million per year.²²

The bill requires the standardized English language arts and the mathematics assessments for grades 3 through 6 to be delivered in a paper-based format.

The bill requires that a student's results on the statewide, standardized science and social studies assessments be included in the mandatory report of assessment results provided to students, parents, and teachers. The mandatory report was previously required to only include the student's results on the statewide, standardized ELA and mathematics assessments.

The bill deletes the requirement that the DOE include data on students who enroll in adult education following 8th grade rather than other secondary education from the required annual report on assessments.

The bill repeals the requirement that the commissioner maintain a statewide item bank, facilitate the sharing of developed tests or test items among school districts, and provide technical assistance in best assessment practices. Additionally, the bill repeals language regarding certain statewide standardized assessments that are no longer used, which specifically includes the standardized reading assessment and the standardized writing assessment for grades 3 through 10. The bill retains the existing English Language Arts Assessments, which has replaced the assessment that the bill repeals.

Section 6 amends the test administration and security public records exemption under s. 1008.24, F.S., which currently protects tests under the student assessment program, to expressly identify the protected assessment tests. The assessment tests expressly incorporated into the exemption relate to:

- Statewide kindergarten screening;
- Assessments administered by the Department of Juvenile Justice education programs;
- English language assessments for limited English proficient students;
- General Education courses;
- The Florida Partnership for Minority and Underrepresented Student Achievement;
- The Student assessment programs for public schools;
- The public school student progression, student support, reporting requirements; and
- Educator certification.

Section 7 amends s. 1008.34, F.S., conforming cross-reference to changes made by this act.

Section 8 amends s. 1008.3415, F.S., conforming cross-reference to changes made by this act.

²² E-mail from Bethany Swanson, Deputy Chief of Staff, Florida Department of Education, *RE: SB 1108* (March 2021) (on file with the Senate Committee on Judiciary).

Section 9 amends s. 1009.286, F.S., to exempt the civics literacy requirement from the excess credit charges under the excess credit hour for a baccalaureate degree program at state universities. If a student at a state university achieves an excess of 110 percent of credit hours required for a baccalaureate program, the remaining hours are charged an *additional* 100 percent of the tuition. The bill provides an exception to courses used to meet the civic literacy requirement.

Section 10 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24 of the Florida Constitution allows the general public 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[.]”²³ Generally, a public records exemption is required when a bill prevents access to public records, including when Florida law provides copyright protection.²⁴

The bill gives the DOE the authority to protect certain public records, such as state authored exam questions, by allowing the Department to assert patent, copyright, and trademark protections. The bill does not specifically create a new public records exemption, and the Department intends to use these intellectual property protections on public records that are already exempt, such as public records under to s. 1008.23, F.S., regarding testing and assessments and s. 1002.221, F.S., regarding education records.²⁵ Thus, a public records exemption is not required to specifically allow for copyright, trademark, or patent protections to the extent that these protections will be used on public records that are already exempt.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²³ FLA. CONST. art. I, s. 24.

²⁴ See *supra* note 12, and accompanying text.

²⁵ Conversation with Matthew Mears, General Counsel, Florida Department of Education (Mar. 15 2021). Additionally, See *supra* note 22.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1108 requires every school district, alternative school, and the DJJ to provide either the SAT or ACT to all 11th grade students, subject to appropriation. The DOE estimates that such an appropriation would require \$8 million per year.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.23, 1003.4282, 1007.25, 1008.212, 1008.22, 1008.24, 1008.34, 1008.3415, and 1009.286.

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

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

CS by Judiciary on March 22, 2021:

The committee substitute provides that each school district administer the SAT or ACT to 11th grade students in the “Department of Juvenile Justice education programs” as opposed to “centers of the Department of Juvenile Justice.”

B. Amendments:

None.

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

²⁶ See *supra* note 22.

By Senator Diaz

36-00467A-21

20211108__

A bill to be entitled

An act relating to education; amending s. 1001.23, F.S.; authorizing the Department of Education to hold patents, copyrights, trademarks, and service marks; authorizing the department to take specified actions to enforce its rights under certain circumstances; requiring the department to notify the Department of State in writing when property rights by patent, copyright, trademark, or service marks are secured by the department; requiring, except for educational materials and products, any proceeds received by the department from the exercise of its rights to be deposited in the department's Operating Trust Fund; amending s. 1003.4282, F.S.; deleting obsolete language; requiring certain students to take a specified assessment relating to civic literacy; providing that such assessment meets certain postsecondary requirements under specified circumstances; conforming a cross-reference; amending s. 1007.25, F.S.; requiring certain postsecondary students to complete a civic literacy course and pass a specified assessment to demonstrate competency in civic literacy; authorizing students to meet the assessment requirements in high school; providing for rulemaking; authorizing the development of new civic literacy courses; providing requirements for such courses; amending s. 1008.212, F.S.; conforming cross-references; amending s. 1008.22, F.S.; revising the purpose of the assessment program; deleting obsolete

36-00467A-21

20211108__

language; requiring that certain assessments be given in a paper-based format; requiring school districts to provide the SAT or ACT to grade 11 students beginning in a specified school year; requiring school districts to choose which assessment to administer; deleting specified reporting requirements; deleting a requirement that the Commissioner of Education maintain a specified item bank; deleting specified requirements for the date of the administration of specified assessments; revising a deadline for the publication of certain assessments; conforming provisions to changes made by the act; amending s. 1008.24, F.S.; revising the tests that are included under test administration and security rules; amending ss. 1008.34 and 1008.3415, F.S.; conforming cross-references; amending s. 1009.286, F.S.; providing an additional exception to credit hours used when calculating baccalaureate degrees; providing an effective date.

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

Section 1. Subsection (5) is added to section 1001.23, Florida Statutes, to read:

1001.23 Specific powers and duties of the Department of Education.—In addition to all other duties assigned to it by law or by rule of the State Board of Education, the department shall:

(5) Notwithstanding the provisions of chapter 286, have the

36-00467A-21

20211108__

59 authority to hold patents, copyrights, trademarks, and service
60 marks. The department may take any action necessary to enforce
61 its rights with respect to such patents, copyrights, trademarks,
62 and service marks or enter into a transaction to sell, lease,
63 license, or transfer such rights for monetary gain or other
64 consideration at the discretion of the department. The
65 department shall notify the Department of State in writing when
66 property rights by patent, copyright, trademark, or service
67 marks are secured by the department. Except for educational
68 materials and products, any proceeds received by the department
69 from the exercise of such rights shall be deposited in the
70 department's Operating Trust Fund.

71 Section 2. Paragraphs (a) and (d) of subsection (3),
72 subsection (7), and paragraph (e) of subsection (10) of section
73 1003.4282, Florida Statutes, are amended to read:

74 1003.4282 Requirements for a standard high school diploma.—

75 (3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT
76 REQUIREMENTS.—

77 (a) *Four credits in English Language Arts (ELA).*—The four
78 credits must be in ELA I, II, III, and IV. A student must pass
79 the statewide, standardized grade 10 ~~Reading assessment or, when~~
80 ~~implemented, the grade 10~~ ELA assessment, or earn a concordant
81 score, in order to earn a standard high school diploma.

82 (d) *Three credits in social studies.*—A student must earn
83 one credit in United States History; one credit in World
84 History; one-half credit in economics; and one-half credit in
85 United States Government. The United States History EOC
86 assessment constitutes 30 percent of the student's final course
87 grade. Beginning with the 2021-2022 school year, students taking

36-00467A-21

20211108__

the United States Government course are required to take the assessment of civic literacy identified by the State Board of Education pursuant to s. 1007.25(4). Students earning a passing score on the assessment are exempt from the postsecondary civic literacy assessment required by s. 1007.25(4).

(7) UNIFORM TRANSFER OF HIGH SCHOOL CREDITS.—Beginning with the 2012-2013 school year, if a student transfers to a Florida public high school from out of country, out of state, a private school, or a home education program and the student's transcript shows a credit in Algebra I, the student must pass the statewide, standardized Algebra I EOC assessment in order to earn a standard high school diploma unless the student earned a comparative score, passed a statewide assessment in Algebra I administered by the transferring entity, or passed the statewide mathematics assessment the transferring entity uses to satisfy the requirements of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA), 20 U.S.C. ss. 6301 et seq. If a student's transcript shows a credit in high school reading or English Language Arts II or III, in order to earn a standard high school diploma, the student must take and pass the statewide, standardized grade 10 ~~Reading assessment~~ ~~or, when implemented, the grade 10 ELA assessment~~, or earn a concordant score. If a transfer student's transcript shows a final course grade and course credit in Algebra I, Geometry, Biology I, or United States History, the transferring course final grade and credit shall be honored without the student taking the requisite statewide, standardized EOC assessment and without the assessment results constituting 30 percent of the student's final course grade.

36-00467A-21

20211108__

(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection applies to a student with a disability.

(e) Any waiver of the statewide, standardized assessment requirements by the individual education plan team, pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(e)~~, must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided for in s. 1003.572.

The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to implement this subsection, including rules that establish the minimum requirements for students described in this subsection to earn a standard high school diploma. The State Board of Education shall adopt emergency rules pursuant to ss. 120.536(1) and 120.54.

Section 3. Subsection (4) of section 1007.25, Florida Statutes, is amended to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(4) (a) Beginning with students initially entering a Florida College System institution or state university in the 2018-2019 school year and thereafter, each student must demonstrate competency in civic literacy. Students must have the option to demonstrate competency either through successful completion of a civic literacy course or by achieving a passing score on an assessment. The State Board of Education must adopt in rule and the Board of Governors must adopt in regulation at least one existing assessment that measures competencies consistent with

36-00467A-21

20211108__

the required course competencies outlined in subparagraph (b)2
~~paragraph (b).~~

(b) Beginning with students initially entering a Florida College System institution or state university in the 2021-2022 school year and thereafter, each student must demonstrate competency in civic literacy by achieving a passing score on an assessment and by successfully completing a civic literacy course. Credits earned for such courses via articulated acceleration mechanisms in s. 1007.27 will count toward the civic literacy competency requirement. The State Board of Education and the Board of Governors shall adopt by rule and regulation, respectively, approved assessments that address the competencies in subparagraph 2. and courses that meet the requirements in subparagraph 1. The chair of the State Board of Education and the chair of the Board of Governors, or their respective designees, shall jointly appoint a faculty committee to:

1. ~~(a)~~ Develop one or more a new courses ~~course~~ in civic literacy or revise an existing general education core course in American History or American Government to include, at a minimum, opportunities to engage synchronously in political discussions and civil debates with multiple points of view and to master the ability to synthesize information that informs civic decisionmaking ~~civic literacy~~.

2. ~~(b)~~ Establish course competencies and identify outcomes that include, at a minimum, an understanding of the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how

36-00467A-21

20211108__

they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society.

Section 4. Paragraph (a) of subsection (1) and subsection (2) of section 1008.212, Florida Statutes, are amended to read:

1008.212 Students with disabilities; extraordinary exemption.—

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

(a) "Circumstance" means a situation in which accommodations allowable for use on the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(e)~~ are not offered to a student during the current year's assessment administration due to technological limitations in the testing administration program which lead to results that reflect the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks assessed by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment.

(2) A student with a disability for whom the individual education plan (IEP) team determines is prevented by a circumstance or condition from physically demonstrating the mastery of skills that have been acquired and are measured by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(e)~~ shall be granted an extraordinary exemption from the administration of the assessment. A learning, emotional, behavioral, or significant

36-00467A-21

20211108__

cognitive disability, or the receipt of services through the homebound or hospitalized program in accordance with rule 6A-6.03020, Florida Administrative Code, is not, in and of itself, an adequate criterion for the granting of an extraordinary exemption.

Section 5. Paragraph (c) of subsection (3) of section 1008.22, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, and paragraph (a) of subsection (1), paragraphs (a), (b), (d), and (g) of subsection (3), subsection (6), paragraphs (a), (b), (c), and (h) of subsection (7), subsections (8) and (9), and paragraph (e) of subsection (12) of that section are amended, to read:

1008.22 Student assessment program for public schools.—

(1) PURPOSE.—The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, teachers, school administrators, and school district staff. This data is to be used by districts to improve instruction; by students, parents, and teachers to guide learning objectives; by education researchers to assess national and international education comparison data; and by the public to assess the cost benefit of the expenditure of taxpayer dollars. The program must be designed to:

(a) Assess the achievement level and ~~annual~~ learning gains of each student in English Language Arts and mathematics and the achievement level in all other subjects assessed.

(3) STATEWIDE, STANDARDIZED ASSESSMENT PROGRAM.—The Commissioner of Education shall design and implement a statewide, standardized assessment program aligned to the core

36-00467A-21

20211108__

curricular content established in the Next Generation Sunshine State Standards. The commissioner also must develop or select and implement a common battery of assessment tools that will be used in all juvenile justice education programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards. Participation in the assessment program is mandatory for all school districts and all students attending public schools, including adult students seeking a standard high school diploma under s. 1003.4282 and students in Department of Juvenile Justice education programs, except as otherwise provided by law. If a student does not participate in the assessment program, the school district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation. The statewide, standardized assessment program shall be designed and implemented as follows:

(a) *Statewide, standardized comprehensive assessments.*—The statewide, standardized ~~Reading assessment shall be administered annually in grades 3 through 10. The statewide, standardized Writing assessment shall be administered annually at least once at the elementary, middle, and high school levels. When the Reading and Writing assessments are replaced by~~ English Language Arts (ELA) assessments, ~~ELA assessments~~ shall be administered to students in grades 3 through 10. Retake opportunities for the ~~grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment~~ must be provided. ~~Students taking the ELA assessments shall not take the statewide, standardized assessments in Reading or Writing.~~ Reading passages and writing prompts for ELA assessments shall incorporate grade-level core

36-00467A-21

20211108__

curricula content from social studies. The statewide, standardized Mathematics assessments shall be administered annually in grades 3 through 8. ~~Students taking a revised Mathematics assessment shall not take the discontinued assessment.~~ The statewide, standardized Science assessment shall be administered annually at least once at the elementary and middle grades levels. In order to earn a standard high school diploma, a student who has not earned a passing score on the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment must earn a passing score on the assessment retake or earn a concordant score as authorized under subsection (9). Statewide, standardized ELA and Mathematics assessments in grades 3 through 6 must be delivered in a paper-based format.

(b) *End-of-course (EOC) assessments.*—EOC assessments must be statewide, standardized, and developed or approved by the Department of Education as follows:

1. EOC assessments for Algebra I, Geometry, Biology I, United States History, and Civics shall be administered to students enrolled in such courses as specified in the course code directory.

2. Students enrolled in a course, as specified in the course code directory, with an associated statewide, standardized EOC assessment must take the EOC assessment for such course and may not take the corresponding subject or grade-level statewide, standardized assessment pursuant to paragraph (a). Sections 1003.4156 and 1003.4282 govern the use of statewide, standardized EOC assessment results for students.

3. The commissioner may select one or more nationally developed comprehensive examinations, which may include

36-00467A-21

20211108__

examinations for a College Board Advanced Placement course, International Baccalaureate course, or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified in the CAPE Industry Certification Funding List, for use as EOC assessments under this paragraph if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade-level expectations for the core curricular content established for the course in the Next Generation Sunshine State Standards. Use of any such examination as an EOC assessment must be approved by the state board in rule.

4. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the commissioner may establish an implementation schedule for the development and administration of additional statewide, standardized EOC assessments that must be approved by the state board in rule. If approved by the state board, student performance on such assessments constitutes 30 percent of a student's final course grade.

5. All statewide, standardized EOC assessments must be administered online except as otherwise provided in paragraph (d) ~~(e)~~.

6. A student enrolled in an Advanced Placement (AP), International Baccalaureate (IB), or Advanced International Certificate of Education (AICE) course who takes the respective AP, IB, or AICE assessment and earns the minimum score necessary to earn college credit, as identified in s. 1007.27(2), meets

36-00467A-21

20211108__

the requirements of this paragraph and does not have to take the EOC assessment for the corresponding course.

(c) Nationally recognized high school assessments.—Each school district shall, by the 2021-2022 school year and subject to appropriation, select either the SAT or ACT for districtwide administration to each public school student in grade 11, including students attending public high schools, alternative schools, and centers of the Department of Juvenile Justice.

~~(d) Implementation schedule.~~—

~~1. The Commissioner of Education shall establish and publish on the department's website an implementation schedule to transition from the statewide, standardized Reading and Writing assessments to the ELA assessments and to the revised Mathematics assessments, including the Algebra I and Geometry EOC assessments. The schedule must take into consideration funding, sufficient field and baseline data, access to assessments, instructional alignment, and school district readiness to administer the assessments online. All such assessments must be delivered through computer-based testing, however, the following assessments must be delivered in a computer-based format, as follows: the grade 3 Mathematics assessment beginning in the 2016-2017 school year; the grade 4 ELA assessment, beginning in the 2015-2016 school year; and the grade 4 Mathematics assessment, beginning in the 2016-2017 school year. Notwithstanding the requirements of this subparagraph, statewide, standardized ELA and mathematics assessments in grades 3 through 6 must be delivered only in a paper-based format, beginning with the 2017-2018 school year, and all such assessments must be paper-based no later than the~~

36-00467A-21

20211108__

~~2018-2019 school year.~~

~~2. The Department of Education shall publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and broadband capacity to facilitate school district compliance with the requirements of this section.~~

(g) Contracts for assessments.-

~~1. The commissioner shall provide for the assessments to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts. The commissioner may enter into contracts for the continued administration of the assessments authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next fiscal year and may be paid from the appropriations of either or both fiscal years. The commissioner may negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law.~~

~~2. A student's performance results on statewide, standardized assessments, EOC assessments, and Florida Alternative Assessments administered pursuant to this subsection must be provided to the student's teachers and parents by the end of the school year, unless the commissioner determines that extenuating circumstances exist and reports the extenuating circumstances to the State Board of Education. This subparagraph does not apply to existing contracts for such assessments, but shall apply to new contracts and any renewal of existing contracts for such assessments.~~

36-00467A-21

20211108__

378 ~~3. If liquidated damages are applicable, the department~~
379 ~~shall collect liquidated damages that are due in response to the~~
380 ~~administration of the spring 2015 computer-based assessments of~~
381 ~~the department's Florida Standards Assessment contract with~~
382 ~~American Institutes for Research, and expend the funds to~~
383 ~~reimburse parties that incurred damages.~~

384 (6) LOCAL ASSESSMENT OF STUDENT PERFORMANCE ON STATE
385 STANDARDS.—

386 ~~(a)~~ Measurement of student performance is the
387 responsibility of school districts except in those subjects and
388 grade levels measured under the statewide, standardized
389 assessment program described in this section. When available,
390 instructional personnel must be provided with information on
391 student achievement of standards and benchmarks in order to
392 improve instruction.

393 ~~(b) The Commissioner of Education shall assist and support~~
394 ~~districts in measuring student performance on the state~~
395 ~~standards by maintaining a statewide item bank, facilitating the~~
396 ~~sharing of developed tests or test items among school districts,~~
397 ~~and providing technical assistance in best assessment practices.~~
398 ~~The commissioner may discontinue the item bank if he or she~~
399 ~~determines that district participation is insufficient for its~~
400 ~~sustainability.~~

401 (7) ASSESSMENT SCHEDULES AND REPORTING OF RESULTS.—

402 (a) The Commissioner of Education shall establish schedules
403 for the administration of statewide, standardized assessments
404 and the reporting of student assessment results. The
405 commissioner shall consider the observance of religious and
406 school holidays when developing the schedules. The assessment

36-00467A-21

20211108__

and reporting schedules must provide the earliest possible reporting of student assessment results to the school districts, ~~consistent with the requirements of paragraph (3)(g).~~ Assessment results for the statewide, standardized ELA and mathematics assessments and all statewide, standardized EOC assessments must be made available no later than June 30, except for results for the grade 3 statewide, standardized ELA assessment, which must be made available no later than May 31. School districts shall administer statewide, standardized assessments in accordance with the schedule established by the commissioner.

(b) By January of each year, ~~beginning in 2018,~~ the commissioner shall publish on the department's website a uniform calendar that includes the assessment and reporting schedules for, at a minimum, the next 2 school years. The uniform calendar must be provided to school districts in an electronic format that allows each school district and public school to populate the calendar with, at minimum, the following information for reporting the district assessment schedules under paragraph (d):

1. Whether the assessment is a district-required assessment or a state-required assessment.

2. The specific date or dates that each assessment will be administered.

3. The time allotted to administer each assessment.

4. Whether the assessment is a computer-based assessment or a paper-based assessment.

5. The grade level or subject area associated with the assessment.

6. The date that the assessment results are expected to be available to teachers and parents.

36-00467A-21

20211108__

436 7. The type of assessment, the purpose of the assessment,
437 and the use of the assessment results.

438 8. A glossary of assessment terminology.

439 9. Estimates of average time for administering state-
440 required and district-required assessments, by grade level.

441 (c) ~~Beginning with the 2018-2019 school year,~~ The spring
442 administration of the statewide, standardized assessments in
443 paragraphs (3)(a) and (b), excluding assessment retakes, must be
444 in accordance with the following schedule:

445 1. The grade 3 statewide, standardized ELA assessment and
446 the writing portion of the statewide, standardized ELA
447 assessment ~~for grades 4 through 10~~ must be administered no
448 earlier than April 1 each year within an assessment window not
449 to exceed 2 weeks.

450 2. With the exception of assessments identified in
451 subparagraph 1., any statewide, standardized assessment that is
452 delivered in a paper-based format must be administered no
453 earlier than May 1 each year within an assessment window not to
454 exceed 2 weeks.

455 3. With the exception of assessments identified in
456 subparagraphs 1. and 2., any statewide, standardized assessment
457 must be administered within a 4-week assessment window that
458 opens no earlier than May 1 each year.

459
460 ~~Each school district shall administer the assessments identified~~
461 ~~under subparagraphs 2. and 3. no earlier than 4 weeks before the~~
462 ~~last day of school for the district.~~

463 (h) The results of statewide, standardized assessment in
464 ELA and mathematics, science, and social studies ~~assessments,~~

36-00467A-21

20211108__

including assessment retakes, shall be reported in an easy-to-read and understandable format and delivered in time to provide useful, actionable information to students, parents, and each student's current teacher of record and teacher of record for the subsequent school year; however, in any case, the district shall provide the results pursuant to this paragraph within 1 week after receiving the results from the department. A report of student assessment results must, at a minimum, contain:

1. A clear explanation of the student's performance on the applicable statewide, standardized assessments.

2. Information identifying the student's areas of strength and areas in need of improvement.

3. Specific actions that may be taken, and the available resources that may be used, by the student's parent to assist his or her child based on the student's areas of strength and areas in need of improvement.

4. Longitudinal information, if available, on the student's progress in each subject area based on previous statewide, standardized assessment data.

5. Comparative information showing the student's score compared to other students in the school district, in the state, or, if available, in other states.

6. Predictive information, if available, showing the linkage between the scores attained by the student on the statewide, standardized assessments and the scores he or she may potentially attain on nationally recognized college entrance examinations.

(8) PUBLICATION OF ASSESSMENTS.—To promote transparency in the statewide assessment program, in any procurement for the

36-00467A-21

20211108__

494 statewide, standardized assessment in ELA, ~~assessment in grades~~
495 ~~3 through 10 and the mathematics, science, and social studies~~
496 ~~assessment in grades 3 through 8,~~ the Department of Education
497 shall solicit cost proposals for publication of the state
498 assessments on its website in accordance with this subsection.

499 (a) The department shall publish each assessment
500 administered under paragraph (3)(a) and subparagraph (3)(b)1.,
501 excluding assessment retakes, at least once on a triennial basis
502 pursuant to a schedule determined by the Commissioner of
503 Education. Each assessment, when published, must have been
504 administered during the most recent school year and be in a
505 format that facilitates the sharing of assessment items.

506 (b) The initial publication of assessments must occur no
507 later than June 30, 2024 ~~June 30, 2021,~~ subject to
508 appropriation, and must include, at a minimum, the grade 3 ELA
509 and mathematics assessments, the grade 10 ELA assessment, and
510 the Algebra I EOC assessment.

511 (c) The department must provide materials on its website to
512 help the public interpret assessment information published
513 pursuant to this subsection.

514 (9) CONCORDANT SCORES.—The Commissioner of Education must
515 identify scores on the SAT and ACT that if achieved satisfy the
516 graduation requirement that a student pass the grade 10
517 ~~statewide, standardized Reading assessment or, upon~~
518 ~~implementation, the grade 10 ELA assessment.~~ The commissioner
519 may identify concordant scores on assessments other than the SAT
520 and ACT. If the content or scoring procedures change for the
521 grade 10 ~~Reading assessment or, upon implementation, the grade~~
522 ~~10~~ ELA assessment, new concordant scores must be determined. If

36-00467A-21

20211108__

new concordant scores are not timely adopted, the last-adopted concordant scores remain in effect until such time as new scores are adopted. The state board shall adopt concordant scores in rule.

(12) REPORTS.—The Department of Education shall annually provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which shall include the following:

~~(e) The number of students who after 8th grade enroll in adult education rather than other secondary education, which is defined as grades 9 through 12.~~

Section 6. Subsection (1) of section 1008.24, Florida Statutes, is amended to read:

1008.24 Test administration and security; public records exemption.—

(1) A person may not knowingly and willfully violate test security rules adopted by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to ss. 1002.69, 1003.52, 1003.56, 1007.25, 1007.35, 1008.22, 1008.25, and 1012.56 ~~s. 1008.22~~, or, with respect to any such test, knowingly and willfully to:

(a) Give examinees access to test questions prior to testing;

(b) Copy, reproduce, or use in any manner inconsistent with test security rules all or any portion of any secure test booklet;

(c) Coach examinees during testing or alter or interfere

36-00467A-21

20211108__

with examinees' responses in any way;

(d) Make answer keys available to examinees;

(e) Fail to follow security rules for distribution and return of secure test as directed, or fail to account for all secure test materials before, during, and after testing;

(f) Fail to follow test administration directions specified in the test administration manuals; or

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibited in this section.

Section 7. Paragraph (a) of subsection (1) of section 1008.34, Florida Statutes, is amended to read:

1008.34 School grading system; school report cards; district grade.—

(1) DEFINITIONS.—For purposes of the statewide, standardized assessment program and school grading system, the following terms are defined:

(a) "Achievement level," "student achievement," or "achievement" describes the level of content mastery a student has acquired in a particular subject as measured by a statewide, standardized assessment administered pursuant to s. 1008.22(3)(a) and (b). There are five achievement levels. Level 1 is the lowest achievement level, level 5 is the highest achievement level, and level 3 indicates satisfactory performance. A student passes an assessment if the student achieves a level 3, level 4, or level 5. For purposes of the Florida Alternate Assessment administered pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(e)~~, the state board shall provide, in rule, the number of achievement levels and identify the achievement levels that are considered passing.

36-00467A-21

20211108__

Section 8. Subsection (2) of section 1008.3415, Florida Statutes, is amended to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(2) Notwithstanding s. 1008.34, the achievement levels and Learning Gains of a student with a disability who attends an exceptional student education center and has not been enrolled in or attended a public school other than an exceptional student education center for grades K-12 within the school district shall not be included in the calculation of the home school's grade if the student is identified as an emergent student on the alternate assessment described in s. 1008.22(3)(d) ~~s.~~ 1008.22(3)(e).

Section 9. Paragraph (i) is added to subsection (4) of section 1009.286, Florida Statutes, to read:

1009.286 Additional student payment for hours exceeding baccalaureate degree program completion requirements at state universities.—

(4) For purposes of this section, credit hours earned under the following circumstances are not calculated as hours required to earn a baccalaureate degree:

(i) Credit hours earned to meet the requirements of s. 1007.25(4).

Section 10. This act shall take effect July 1, 2021.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

February 18, 2021

Honorable Senator Jeff Brandes
Chair
Committee on Judiciary

Honorable Chair Brandes,

I respectfully request Senate Bill Number 1108 Education be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Thomas Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant
Melissa Meshil, Legislative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

22 Mar 21

Meeting Date

1108

Bill Number (if applicable)

Topic Education (Testing)

Amendment Barcode (if applicable)

Name Debbie Mortham

Job Title Florida Advocacy Director

Address 215 S Monroe Street, Suite 420

Phone 391-4090

Street

Tallahassee

FL

32301

Email Debbie@afloridapromise.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Foundation for Florida's Future

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

March 22, 201

Meeting Date

1108

Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Robert Holladay

Job Title Professor of History, Tallahassee Cor

Address 3362 Foley Drive

Phone 8502127730

Street

Tallahassee,

FL

32309

City

State

Zip

Email wingbiddlebaumjr@

gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself and other History and Government Teachers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

3/22/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 1108

Bill Number (if applicable)

Topic SB 1108 - Education by Diaz

Amendment Barcode (if applicable)

Name Alexis Calatayud

Job Title Legislative Affairs Director

Address 325 W Gaines Street

Phone (305)877-9828

Street

Tallahassee

FL

32399

Email alexis.calatayud@fldoe.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Department of Education

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 1498

INTRODUCER: Senator Pizzo and others

SUBJECT: Renaming the Criminal Punishment Code

DATE: March 22, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2. Ravelo	Cibula	JU	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 1498 renames the Criminal Punishment Code (Code), Florida's primary sentencing policy for noncapital felonies, as the Public Safety Code.

The Code currently emphasizes that while *rehabilitation* is a desired goal of the criminal justice system, it remains subordinate to the goal of *punishment*. The bill revises this statement to provide that: *rehabilitation*, while a desired goal, is subordinate to the goal of *public safety*. The bill retains the provision of current law which states that the primary purpose of sentencing is to punish the offender.

The bill should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

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

II. Present Situation:

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² The primary purpose of the Code is to "punish the offender."³

"Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment."⁴ Noncapital felonies sentenced under the Code receive an offense severity level

¹ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

² See chs. 97-194 and 98-204, Laws of Fla.

³ Section 921.002(1)(b), F.S.

⁴ *Id.*

ranking (Levels 1-10).⁵ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁶ Sentence points escalate as the level escalates. Points may be added or multiplied for other factors such as victim injury or the commission of certain drug trafficking offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence *in prison* months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation,⁷ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.⁸ However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁹ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.¹⁰

III. Effect of Proposed Changes:

The bill amends numerous statutes (see "Statutes Affected" section of this analysis) to rename the Criminal Punishment Code (Code), Florida's primary sentencing policy for noncapital felonies, as the Public Safety Code.

The bill amends s. 921.002, F.S., of the Code, which, in part, specifies that rehabilitation, while a desired goal of the criminal justice system, is subordinate to the goal of punishment. The bill revises this statement to emphasize that rehabilitation, while a desired goal, is subordinate to the goal of public safety.

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

⁵ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁶ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁷ The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

⁸ Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed 1 year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁹ Fla. R. Crim. P. 3.704(d)(26).

¹⁰ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 1498 should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 775.087, 782.051, 817.568, 893.13, 893.20, 910.035, 921.002, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and 985.465.

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

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

None.

B. Amendments:

None.

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

By Senator Pizzo

38-01493-21

20211498__

A bill to be entitled
An act relating to renaming the Criminal Punishment
Code; amending ss. 775.082, 775.087, 782.051, 817.568,
893.13, 910.035, 921.0022, 921.0023, 921.0024,
921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17,
948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and
985.465, F.S.; renaming the Criminal Punishment Code
as the Criminal Public Safety Code; amending s.
921.002, F.S.; revising a principle of the Criminal
Public Safety Code; conforming provisions to changes
made by the act; amending s. 893.20, F.S.; conforming
a provision to changes made by the act; making a
technical change; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (8) of
section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures;
mandatory minimum sentences for certain reoffenders previously
released from prison.—

(8)

(d) The Criminal Public Safety ~~Punishment~~ Code applies to
all felonies, except capital felonies, committed on or after
October 1, 1998. Any revision to the Criminal Public Safety
~~Punishment~~ Code applies to sentencing for all felonies, except
capital felonies, committed on or after the effective date of
the revision.

(e) Felonies, except capital felonies, with continuing

38-01493-21

20211498__

30 dates of enterprise shall be sentenced under the sentencing
31 guidelines or the Criminal Public Safety ~~Punishment~~ Code in
32 effect on the beginning date of the criminal activity.

33 Section 2. Paragraph (c) of subsection (2) and paragraph
34 (c) of subsection (3) of section 775.087, Florida Statutes, are
35 amended to read:

36 775.087 Possession or use of weapon; aggravated battery;
37 felony reclassification; minimum sentence.—

38 (2)

39 (c) If the minimum mandatory terms of imprisonment imposed
40 pursuant to this section exceed the maximum sentences authorized
41 by s. 775.082, s. 775.084, or the Criminal Public Safety
42 ~~Punishment~~ Code under chapter 921, then the mandatory minimum
43 sentence must be imposed. If the mandatory minimum terms of
44 imprisonment pursuant to this section are less than the
45 sentences that could be imposed as authorized by s. 775.082, s.
46 775.084, or the Criminal Public Safety ~~Punishment~~ Code under
47 chapter 921, then the sentence imposed by the court must include
48 the mandatory minimum term of imprisonment as required in this
49 section.

50 (3)

51 (c) If the minimum mandatory terms of imprisonment imposed
52 pursuant to this section exceed the maximum sentences authorized
53 by s. 775.082, s. 775.084, or the Criminal Public Safety
54 ~~Punishment~~ Code under chapter 921, then the mandatory minimum
55 sentence must be imposed. If the mandatory minimum terms of
56 imprisonment pursuant to this section are less than the
57 sentences that could be imposed as authorized by s. 775.082, s.
58 775.084, or the Criminal Public Safety ~~Punishment~~ Code under

38-01493-21

20211498__

chapter 921, then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required in this section.

Section 3. Section 782.051, Florida Statutes, is amended to read:

782.051 Attempted felony murder.—

(1) Any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 9 of the Criminal Public Safety ~~Punishment~~ Code. Victim injury points shall be scored under this subsection.

(2) Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 8 of the Criminal Public Safety ~~Punishment~~ Code. Victim injury points shall be scored under this subsection.

(3) When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3) by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a

38-01493-21

20211498__

felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 7 of the Criminal Public Safety ~~Punishment~~ Code. Victim injury points shall be scored under this subsection.

Section 4. Subsection (3) of section 817.568, Florida Statutes, is amended to read:

817.568 Criminal use of personal identification information.—

(3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents a court from imposing a greater sentence of incarceration as authorized by law. If the minimum mandatory terms of imprisonment imposed under paragraph (2)(b) or paragraph (2)(c) exceed the maximum sentences authorized under s. 775.082, s. 775.084, or the Criminal Public Safety ~~Punishment~~ Code under chapter 921, the mandatory minimum sentence must be imposed. If the mandatory minimum terms of imprisonment under paragraph (2)(b) or paragraph (2)(c) are less than the sentence that could be imposed under s. 775.082, s. 775.084, or the Criminal Public Safety ~~Punishment~~ Code under chapter 921, the sentence imposed by the court must include the mandatory minimum term of imprisonment as required by paragraph (2)(b) or paragraph (2)(c).

Section 5. Paragraph (d) of subsection (8) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(8)

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received \$1,000 or more in payment for writing one or more prescriptions or, in the

38-01493-21

20211498__

case of a prescription written for a controlled substance described in s. 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under s. 893.135, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Public Safety ~~Punishment~~ Code.

Section 6. Paragraph (f) of subsection (5) of section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(f) Upon successful completion of the problem-solving court program, the jurisdiction to which the case has been transferred shall dispose of the case. If the defendant does not complete the problem-solving court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Public Safety ~~Punishment~~ Code.

Section 7. Section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Public Safety ~~Punishment~~ Code; offense severity ranking chart.—

(1) The offense severity ranking chart must be used with the Criminal Public Safety ~~Punishment~~ Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to

38-01493-21

20211498__

most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.085, s. 775.0861, s. 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

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

38-01493-21

20211498__

212.15 (2) (b)

3rd

Failure to remit sales
taxes, amount \$1,000 or more
but less than \$20,000.

316.1935 (1)

3rd

Fleeing or attempting to
elude law enforcement
officer.

319.30 (5)

3rd

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

319.35 (1) (a)

3rd

Tamper, adjust, change,
etc., an odometer.

320.26 (1) (a)

3rd

Counterfeit, manufacture, or
sell registration license
plates or validation
stickers.

322.212

3rd

(1) (a) - (c)

Possession of forged,
stolen, counterfeit, or
unlawfully issued driver
license; possession of
simulated identification.

322.212 (4)

3rd

Supply or aid in supplying
unauthorized driver license
or identification card.

38-01493-21

20211498__

174

322.212 (5) (a)

3rd

False application for driver
license or identification
card.

175

414.39 (3) (a)

3rd

Fraudulent misappropriation
of public assistance funds
by employee/official, value
more than \$200.

176

443.071 (1)

3rd

False statement or
representation to obtain or
increase reemployment
assistance benefits.

177

509.151 (1)

3rd

Defraud an innkeeper, food
or lodging value \$1,000 or
more.

178

517.302 (1)

3rd

Violation of the Florida
Securities and Investor
Protection Act.

179

713.69

3rd

Tenant removes property upon
which lien has accrued,
value \$1,000 or more.

180

812.014 (3) (c)

3rd

Petit theft (3rd
conviction); theft of any

38-01493-21

20211498__

property not specified in
subsection (2).

812.081(2)

3rd

Unlawfully makes or causes
to be made a reproduction of
a trade secret.

815.04(5)(a)

3rd

Offense against intellectual
property (i.e., computer
programs, data).

817.52(2)

3rd

Hiring with intent to
defraud, motor vehicle
services.

817.569(2)

3rd

Use of public record or
public records information
or providing false
information to facilitate
commission of a felony.

826.01

3rd

Bigamy.

828.122(3)

3rd

Fighting or baiting animals.

831.04(1)

3rd

Any erasure, alteration,
etc., of any replacement
deed, map, plat, or other
document listed in s. 92.28.

38-01493-21

20211498__

188

831.31 (1) (a)

3rd

Sell, deliver, or possess
counterfeit controlled
substances, all but s.
893.03(5) drugs.

189

832.041 (1)

3rd

Stopping payment with intent
to defraud \$150 or more.

190

832.05 (2) (b) &
(4) (c)

3rd

Knowing, making, issuing
worthless checks \$150 or
more or obtaining property
in return for worthless
check \$150 or more.

191

838.15 (2)

3rd

Commercial bribe receiving.

192

838.16

3rd

Commercial bribery.

193

843.18

3rd

Fleeing by boat to elude a
law enforcement officer.

194

847.011 (1) (a)

3rd

Sell, distribute, etc.,
obscene, lewd, etc.,
material (2nd conviction).

195

849.09 (1) (a) - (d)

3rd

Lottery; set up, promote,
etc., or assist therein,
conduct or advertise drawing

38-01493-21

20211498__

for prizes, or dispose of
property or money by means
of lottery.

849.23

3rd

Gambling-related machines;
"common offender" as to
property rights.

849.25 (2)

3rd

Engaging in bookmaking.

860.08

3rd

Interfere with a railroad
signal.

860.13 (1) (a)

3rd

Operate aircraft while under
the influence.

893.13 (2) (a) 2.

3rd

Purchase of cannabis.

893.13 (6) (a)

3rd

Possession of cannabis (more
than 20 grams).

934.03 (1) (a)

3rd

Intercepts, or procures any
other person to intercept,
any wire or oral
communication.

(b) LEVEL 2

38-01493-21

20211498__

Florida
Statute

Felony
Degree

Description

379.2431
(1) (e) 3.

3rd

Possession of 11 or
fewer marine turtle eggs
in violation of the
Marine Turtle Protection
Act.

379.2431
(1) (e) 4.

3rd

Possession of more than
11 marine turtle eggs in
violation of the Marine
Turtle Protection Act.

403.413 (6) (c)

3rd

Dumps waste litter
exceeding 500 lbs. in
weight or 100 cubic feet
in volume or any
quantity for commercial
purposes, or hazardous
waste.

517.07 (2)

3rd

Failure to furnish a
prospectus meeting
requirements.

590.28 (1)

3rd

Intentional burning of
lands.

38-01493-21

20211498__

784.05 (3)

3rd

Storing or leaving a
loaded firearm within
reach of minor who uses
it to inflict injury or
death.

212

787.04 (1)

3rd

In violation of court
order, take, entice,
etc., minor beyond state
limits.

213

806.13 (1) (b) 3.

3rd

Criminal mischief;
damage \$1,000 or more to
public communication or
any other public
service.

214

810.061 (2)

3rd

Impairing or impeding
telephone or power to a
dwelling; facilitating
or furthering burglary.

215

810.09 (2) (e)

3rd

Trespassing on posted
commercial horticulture
property.

216

812.014 (2) (c) 1.

3rd

Grand theft, 3rd degree;
\$750 or more but less
than \$5,000.

38-01493-21

20211498__

217

812.014 (2) (d)

3rd

Grand theft, 3rd degree;
\$100 or more but less
than \$750, taken from
unenclosed curtilage of
dwelling.

218

812.015 (7)

3rd

Possession, use, or
attempted use of an
antishoplifting or
inventory control device
countermeasure.

219

817.234 (1) (a) 2.

3rd

False statement in
support of insurance
claim.

220

817.481 (3) (a)

3rd

Obtain credit or
purchase with false,
expired, counterfeit,
etc., credit card, value
over \$300.

221

817.52 (3)

3rd

Failure to redeliver
hired vehicle.

222

817.54

3rd

With intent to defraud,
obtain mortgage note,
etc., by false

38-01493-21

20211498__

representation.

223

817.60 (5)

3rd

Dealing in credit cards
of another.

224

817.60 (6) (a)

3rd

Forgery; purchase goods,
services with false
card.

225

817.61

3rd

Fraudulent use of credit
cards over \$100 or more
within 6 months.

226

826.04

3rd

Knowingly marries or has
sexual intercourse with
person to whom related.

227

831.01

3rd

Forgery.

228

831.02

3rd

Uttering forged
instrument; utters or
publishes alteration
with intent to defraud.

229

831.07

3rd

Forging bank bills,
checks, drafts, or
promissory notes.

230

831.08

3rd

Possessing 10 or more

	38-01493-21		20211498__
			forged notes, bills, checks, or drafts.
231	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
232	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
233	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
234	843.08	3rd	False personation.
235	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs other than cannabis.
236	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.

38-01493-21

20211498__

(c) LEVEL 3

Florida
StatuteFelony
Degree

Description

119.10 (2) (b)

3rd

Unlawful use of
confidential information
from police reports.316.066
(3) (b) - (d)

3rd

Unlawfully obtaining or
using confidential crash
reports.

316.193 (2) (b)

3rd

Felony DUI, 3rd conviction.

316.1935 (2)

3rd

Fleeing or attempting to
elude law enforcement
officer in patrol vehicle
with siren and lights
activated.

319.30 (4)

3rd

Possession by junkyard of
motor vehicle with
identification number plate
removed.

319.33 (1) (a)

3rd

Alter or forge any
certificate of title to a

38-01493-21

20211498__

motor vehicle or mobile
home.

246

319.33(1)(c)

3rd

Procure or pass title on
stolen vehicle.

247

319.33(4)

3rd

With intent to defraud,
possess, sell, etc., a
blank, forged, or
unlawfully obtained title
or registration.

248

327.35(2)(b)

3rd

Felony BUI.

249

328.05(2)

3rd

Possess, sell, or
counterfeit fictitious,
stolen, or fraudulent
titles or bills of sale of
vessels.

250

328.07(4)

3rd

Manufacture, exchange, or
possess vessel with
counterfeit or wrong ID
number.

251

376.302(5)

3rd

Fraud related to
reimbursement for cleanup
expenses under the Inland
Protection Trust Fund.

38-01493-21

20211498__

252

379.2431
(1) (e) 5.

3rd

Taking, disturbing,
mutilating, destroying,
causing to be destroyed,
transferring, selling,
offering to sell,
molesting, or harassing
marine turtles, marine
turtle eggs, or marine
turtle nests in violation
of the Marine Turtle
Protection Act.

253

379.2431
(1) (e) 6.

3rd

Possessing any marine
turtle species or
hatchling, or parts
thereof, or the nest of any
marine turtle species
described in the Marine
Turtle Protection Act.

254

379.2431
(1) (e) 7.

3rd

Soliciting to commit or
conspiring to commit a
violation of the Marine
Turtle Protection Act.

255

400.9935 (4) (a)
or (b)

3rd

Operating a clinic, or
offering services requiring
licensure, without a

38-01493-21

20211498__

license.

256

400.9935(4)(e)

3rd

Filing a false license
application or other
required information or
failing to report
information.

257

440.1051(3)

3rd

False report of workers'
compensation fraud or
retaliation for making such
a report.

258

501.001(2)(b)

2nd

Tampers with a consumer
product or the container
using materially
false/misleading
information.

259

624.401(4)(a)

3rd

Transacting insurance
without a certificate of
authority.

260

624.401(4)(b)1.

3rd

Transacting insurance
without a certificate of
authority; premium
collected less than
\$20,000.

261

38-01493-21

20211498__

626.902 (1) (a) &
(b)

3rd Representing an
unauthorized insurer.

697.08

3rd Equity skimming.

790.15 (3)

3rd Person directs another to
discharge firearm from a
vehicle.

806.10 (1)

3rd Maliciously injure,
destroy, or interfere with
vehicles or equipment used
in firefighting.

806.10 (2)

3rd Interferes with or assaults
firefighter in performance
of duty.

810.09 (2) (c)

3rd Trespass on property other
than structure or
conveyance armed with
firearm or dangerous
weapon.

812.014 (2) (c) 2.

3rd Grand theft; \$5,000 or more
but less than \$10,000.

812.0145 (2) (c)

3rd Theft from person 65 years
of age or older; \$300 or

38-01493-21

20211498__

more but less than \$10,000.

269

812.015 (8) (b)

3rd

Retail theft with intent to
sell; conspires with
others.

270

815.04 (5) (b)

2nd

Computer offense devised to
defraud or obtain property.

271

817.034 (4) (a) 3.

3rd

Engages in scheme to
defraud (Florida
Communications Fraud Act),
property valued at less
than \$20,000.

272

817.233

3rd

Burning to defraud insurer.

273

817.234

3rd

(8) (b) & (c)

Unlawful solicitation of
persons involved in motor
vehicle accidents.

274

817.234 (11) (a)

3rd

Insurance fraud; property
value less than \$20,000.

275

817.236

3rd

Filing a false motor
vehicle insurance
application.

276

817.2361

3rd

Creating, marketing, or

38-01493-21

20211498__

presenting a false or
fraudulent motor vehicle
insurance card.

277

817.413(2)

3rd

Sale of used goods of
\$1,000 or more as new.

278

831.28(2)(a)

3rd

Counterfeiting a payment
instrument with intent to
defraud or possessing a
counterfeit payment
instrument with intent to
defraud.

279

831.29

2nd

Possession of instruments
for counterfeiting driver
licenses or identification
cards.

280

838.021(3)(b)

3rd

Threatens unlawful harm to
public servant.

281

843.19

2nd

Injure, disable, or kill
police, fire, or SAR canine
or police horse.

282

860.15(3)

3rd

Overcharging for repairs
and parts.

283

38-01493-21

20211498__

870.01(2)

3rd

Riot; inciting or
encouraging.

284

893.13(1)(a)2.

3rd

Sell, manufacture, or
deliver cannabis (or other
s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4)
drugs).

285

893.13(1)(d)2.

2nd

Sell, manufacture, or
deliver s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10., (3),
or (4) drugs within 1,000
feet of university.

286

893.13(1)(f)2.

2nd

Sell, manufacture, or
deliver s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10., (3),
or (4) drugs within 1,000
feet of public housing

38-01493-21

20211498__

facility.

287

893.13(4)(c)

3rd

Use or hire of minor;
 deliver to minor other
 controlled substances.

288

893.13(6)(a)

3rd

Possession of any
 controlled substance other
 than felony possession of
 cannabis.

289

893.13(7)(a)8.

3rd

Withhold information from
 practitioner regarding
 previous receipt of or
 prescription for a
 controlled substance.

290

893.13(7)(a)9.

3rd

Obtain or attempt to obtain
 controlled substance by
 fraud, forgery,
 misrepresentation, etc.

291

893.13(7)(a)10.

3rd

Affix false or forged label
 to package of controlled
 substance.

292

893.13(7)(a)11.

3rd

Furnish false or fraudulent
 material information on any
 document or record required

38-01493-21

20211498__

by chapter 893.

893.13(8)(a)1.

3rd

Knowingly assist a patient,
other person, or owner of
an animal in obtaining a
controlled substance
through deceptive, untrue,
or fraudulent
representations in or
related to the
practitioner's practice.

893.13(8)(a)2.

3rd

Employ a trick or scheme in
the practitioner's practice
to assist a patient, other
person, or owner of an
animal in obtaining a
controlled substance.

893.13(8)(a)3.

3rd

Knowingly write a
prescription for a
controlled substance for a
fictitious person.

893.13(8)(a)4.

3rd

Write a prescription for a
controlled substance for a
patient, other person, or
an animal if the sole
purpose of writing the

38-01493-21

20211498__

prescription is a monetary
benefit for the
practitioner.

918.13(1)(a)

3rd

Alter, destroy, or conceal
investigation evidence.

944.47
(1)(a)1. & 2.

3rd

Introduce contraband to
correctional facility.

944.47(1)(c)

2nd

Possess contraband while
upon the grounds of a
correctional institution.

985.721

3rd

Escapes from a juvenile
facility (secure detention
or residential commitment
facility).

(d) LEVEL 4

Florida
Statute

Felony
Degree

Description

316.1935(3)(a)

2nd

Driving at high speed or
with wanton disregard
for safety while fleeing
or attempting to elude
law enforcement officer

38-01493-21

20211498__

who is in a patrol
vehicle with siren and
lights activated.

305

499.0051(1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

306

499.0051(5)

2nd

Knowing sale or
delivery, or possession
with intent to sell,
contraband prescription
drugs.

307

517.07(1)

3rd

Failure to register
securities.

308

517.12(1)

3rd

Failure of dealer,
associated person, or
issuer of securities to
register.

309

784.07(2)(b)

3rd

Battery of law
enforcement officer,
firefighter, etc.

310

784.074(1)(c)

3rd

Battery of sexually

38-01493-21

20211498__

violent predators
facility staff.

311

784.075

3rd

Battery on detention or
commitment facility
staff.

312

784.078

3rd

Battery of facility
employee by throwing,
tossing, or expelling
certain fluids or
materials.

313

784.08 (2) (c)

3rd

Battery on a person 65
years of age or older.

314

784.081 (3)

3rd

Battery on specified
official or employee.

315

784.082 (3)

3rd

Battery by detained
person on visitor or
other detainee.

316

784.083 (3)

3rd

Battery on code
inspector.

317

784.085

3rd

Battery of child by
throwing, tossing,
projecting, or expelling

38-01493-21

20211498__

certain fluids or
materials.

318

787.03(1)

3rd

Interference with
custody; wrongly takes
minor from appointed
guardian.

319

787.04(2)

3rd

Take, entice, or remove
child beyond state
limits with criminal
intent pending custody
proceedings.

320

787.04(3)

3rd

Carrying child beyond
state lines with
criminal intent to avoid
producing child at
custody hearing or
delivering to designated
person.

321

787.07

3rd

Human smuggling.

322

790.115(1)

3rd

Exhibiting firearm or
weapon within 1,000 feet
of a school.

323

790.115(2)(b)

3rd

Possessing electric

38-01493-21

20211498__

weapon or device,
destructive device, or
other weapon on school
property.

324

790.115 (2) (c)

3rd

Possessing firearm on
school property.

325

800.04 (7) (c)

3rd

Lewd or lascivious
exhibition; offender
less than 18 years.

326

810.02 (4) (a)

3rd

Burglary, or attempted
burglary, of an
unoccupied structure;
unarmed; no assault or
battery.

327

810.02 (4) (b)

3rd

Burglary, or attempted
burglary, of an
unoccupied conveyance;
unarmed; no assault or
battery.

328

810.06

3rd

Burglary; possession of
tools.

329

810.08 (2) (c)

3rd

Trespass on property,
armed with firearm or

38-01493-21

20211498__

dangerous weapon.

330

812.014 (2) (c) 3.

3rd

Grand theft, 3rd degree
\$10,000 or more but less
than \$20,000.

331

812.014
(2) (c) 4.-10.

3rd

Grand theft, 3rd degree;
specified items.

332

812.0195 (2)

3rd

Dealing in stolen
property by use of the
Internet; property
stolen \$300 or more.

333

817.505 (4) (a)

3rd

Patient brokering.

334

817.563 (1)

3rd

Sell or deliver
substance other than
controlled substance
agreed upon, excluding
s. 893.03(5) drugs.

335

817.568 (2) (a)

3rd

Fraudulent use of
personal identification
information.

336

817.625 (2) (a)

3rd

Fraudulent use of
scanning device,
skimming device, or

38-01493-21

20211498__

reencoder.

337

817.625 (2) (c)

3rd

Possess, sell, or
deliver skimming device.

338

828.125 (1)

2nd

Kill, maim, or cause
great bodily harm or
permanent breeding
disability to any
registered horse or
cattle.

339

837.02 (1)

3rd

Perjury in official
proceedings.

340

837.021 (1)

3rd

Make contradictory
statements in official
proceedings.

341

838.022

3rd

Official misconduct.

342

839.13 (2) (a)

3rd

Falsifying records of an
individual in the care
and custody of a state
agency.

343

839.13 (2) (c)

3rd

Falsifying records of
the Department of
Children and Families.

38-01493-21

20211498__

344

843.021

3rd

Possession of a
concealed handcuff key
by a person in custody.

345

843.025

3rd

Deprive law enforcement,
correctional, or
correctional probation
officer of means of
protection or
communication.

346

843.15 (1) (a)

3rd

Failure to appear while
on bail for felony (bond
estreature or bond
jumping).

347

847.0135 (5) (c)

3rd

Lewd or lascivious
exhibition using
computer; offender less
than 18 years.

348

874.05 (1) (a)

3rd

Encouraging or
recruiting another to
join a criminal gang.

349

893.13 (2) (a) 1.

2nd

Purchase of cocaine (or
other s. 893.03 (1) (a),
(b), or (d), (2) (a),

38-01493-21

20211498__

(2) (b), or (2) (c) 5.
drugs).

914.14 (2)

3rd

Witnesses accepting
bribes.

914.22 (1)

3rd

Force, threaten, etc.,
witness, victim, or
informant.

914.23 (2)

3rd

Retaliation against a
witness, victim, or
informant, no bodily
injury.

916.1085
(2) (c) 1.

3rd

Introduction of
specified contraband
into certain DCF
facilities.

918.12

3rd

Tampering with jurors.

934.215

3rd

Use of two-way
communications device to
facilitate commission of
a crime.

944.47 (1) (a) 6.

3rd

Introduction of
contraband (cellular

38-01493-21

20211498__

telephone or other
portable communication
device) into
correctional
institution.

357

951.22 (1) (h) ,
(j) & (k)

3rd

Intoxicating drug,
instrumentality or other
device to aid escape, or
cellular telephone or
other portable
communication device
introduced into county
detention facility.

358

359

(e) LEVEL 5

360

Florida
Statute

Felony
Degree

Description

361

316.027 (2) (a)

3rd

Accidents involving
personal injuries other
than serious bodily
injury, failure to stop;
leaving scene.

362

316.1935 (4) (a)

2nd

Aggravated fleeing or
eluding.

363

38-01493-21

20211498__

316.80 (2)

2nd

Unlawful conveyance of
fuel; obtaining fuel
fraudulently.

322.34 (6)

3rd

Careless operation of
motor vehicle with
suspended license,
resulting in death or
serious bodily injury.

327.30 (5)

3rd

Vessel accidents
involving personal
injury; leaving scene.

379.365 (2) (c) 1.

3rd

Violation of rules
relating to: willful
molestation of stone
crab traps, lines, or
buoys; illegal
bartering, trading, or
sale, conspiring or
aiding in such barter,
trade, or sale, or
supplying, agreeing to
supply, aiding in
supplying, or giving
away stone crab trap
tags or certificates;
making, altering,

38-01493-21

20211498__

forging, counterfeiting,
or reproducing stone
crab trap tags;
possession of forged,
counterfeit, or
imitation stone crab
trap tags; and engaging
in the commercial
harvest of stone crabs
while license is
suspended or revoked.

367

379.367(4)

3rd

Willful molestation of a
commercial harvester's
spiny lobster trap,
line, or buoy.

368

379.407(5)(b)3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

369

381.0041(11)(b)

3rd

Donate blood, plasma, or
organs knowing HIV
positive.

370

440.10(1)(g)

2nd

Failure to obtain
workers' compensation
coverage.

371

38-01493-21

20211498__

440.105 (5)

2nd

Unlawful solicitation
for the purpose of
making workers'
compensation claims.

372

440.381 (2)

3rd

Submission of false,
misleading, or
incomplete information
with the purpose of
avoiding or reducing
workers' compensation
premiums.

373

624.401 (4) (b) 2.

2nd

Transacting insurance
without a certificate or
authority; premium
collected \$20,000 or
more but less than
\$100,000.

374

626.902 (1) (c)

2nd

Representing an
unauthorized insurer;
repeat offender.

375

790.01 (2)

3rd

Carrying a concealed
firearm.

376

790.162

2nd

Threat to throw or
discharge destructive

38-01493-21

20211498__

device.

377

790.163 (1)

2nd

False report of bomb,
explosive, weapon of
mass destruction, or use
of firearms in violent
manner.

378

790.221 (1)

2nd

Possession of short-
barreled shotgun or
machine gun.

379

790.23

2nd

Felons in possession of
firearms, ammunition, or
electronic weapons or
devices.

380

796.05 (1)

2nd

Live on earnings of a
prostitute; 1st offense.

381

800.04 (6) (c)

3rd

Lewd or lascivious
conduct; offender less
than 18 years of age.

382

800.04 (7) (b)

2nd

Lewd or lascivious
exhibition; offender 18
years of age or older.

383

806.111 (1)

3rd

Possess, manufacture, or

38-01493-21

20211498__

dispense fire bomb with
intent to damage any
structure or property.

384

812.0145 (2) (b)

2nd

Theft from person 65
years of age or older;
\$10,000 or more but less
than \$50,000.

385

812.015

3rd

(8) (a) & (c) - (e)

Retail theft; property
stolen is valued at \$750
or more and one or more
specified acts.

386

812.019 (1)

2nd

Stolen property; dealing
in or trafficking in.

387

812.131 (2) (b)

3rd

Robbery by sudden
snatching.

388

812.16 (2)

3rd

Owning, operating, or
conducting a chop shop.

389

817.034 (4) (a) 2.

2nd

Communications fraud,
value \$20,000 to
\$50,000.

390

817.234 (11) (b)

2nd

Insurance fraud;
property value \$20,000

38-01493-21

20211498__

or more but less than
\$100,000.

391

817.2341(1),
(2) (a) & (3) (a)

3rd

Filing false financial
statements, making false
entries of material fact
or false statements
regarding property
values relating to the
solvency of an insuring
entity.

392

817.568 (2) (b)

2nd

Fraudulent use of
personal identification
information; value of
benefit, services
received, payment
avoided, or amount of
injury or fraud, \$5,000
or more or use of
personal identification
information of 10 or
more persons.

393

817.611 (2) (a)

2nd

Traffic in or possess 5
to 14 counterfeit credit
cards or related
documents.

394

38-01493-21

20211498__

817.625 (2) (b)

2nd

Second or subsequent
fraudulent use of
scanning device,
skimming device, or
reencoder.

825.1025 (4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled
adult.

827.071 (4)

2nd

Possess with intent to
promote any photographic
material, motion
picture, etc., which
includes sexual conduct
by a child.

827.071 (5)

3rd

Possess, control, or
intentionally view any
photographic material,
motion picture, etc.,
which includes sexual
conduct by a child.

828.12 (2)

3rd

Tortures any animal with
intent to inflict
intense pain, serious

38-01493-21

20211498__

physical injury, or
death.

399

839.13 (2) (b)

2nd

Falsifying records of an
individual in the care
and custody of a state
agency involving great
bodily harm or death.

400

843.01

3rd

Resist officer with
violence to person;
resist arrest with
violence.

401

847.0135 (5) (b)

2nd

Lewd or lascivious
exhibition using
computer; offender 18
years or older.

402

847.0137
(2) & (3)

3rd

Transmission of
pornography by
electronic device or
equipment.

403

847.0138
(2) & (3)

3rd

Transmission of material
harmful to minors to a
minor by electronic
device or equipment.

404

38-01493-21

20211498__

874.05 (1) (b)

2nd

Encouraging or
recruiting another to
join a criminal gang;
second or subsequent
offense.

405

874.05 (2) (a)

2nd

Encouraging or
recruiting person under
13 years of age to join
a criminal gang.

406

893.13 (1) (a) 1.

2nd

Sell, manufacture, or
deliver cocaine (or
other s. 893.03 (1) (a),
(1) (b), (1) (d), (2) (a),
(2) (b), or (2) (c) 5.
drugs).

407

893.13 (1) (c) 2.

2nd

Sell, manufacture, or
deliver cannabis (or
other s. 893.03 (1) (c),
(2) (c) 1., (2) (c) 2.,
(2) (c) 3., (2) (c) 6.,
(2) (c) 7., (2) (c) 8.,
(2) (c) 9., (2) (c) 10.,
(3), or (4) drugs)
within 1,000 feet of a
child care facility,
school, or state,

38-01493-21

20211498__

county, or municipal
park or publicly owned
recreational facility or
community center.

408

893.13(1)(d)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)5.
drugs) within 1,000 feet
of university.

409

893.13(1)(e)2.

2nd

Sell, manufacture, or
deliver cannabis or
other drug prohibited
under s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10.,
(3), or (4) within 1,000
feet of property used
for religious services
or a specified business
site.

410

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or

38-01493-21

20211498__

other s. 893.03(1)(a),
 (1)(b), (1)(d), or
 (2)(a), (2)(b), or
 (2)(c)5. drugs) within
 1,000 feet of public
 housing facility.

411

893.13(4)(b)

2nd

Use or hire of minor;
 deliver to minor other
 controlled substance.

412

893.1351(1)

3rd

Ownership, lease, or
 rental for trafficking
 in or manufacturing of
 controlled substance.

413

414 (f) LEVEL 6

415

Florida
 Statute

Felony
 Degree

Description

416

316.027(2)(b)

2nd

Leaving the scene of a
 crash involving serious
 bodily injury.

417

316.193(2)(b)

3rd

Felony DUI, 4th or
 subsequent conviction.

418

400.9935(4)(c)

2nd

Operating a clinic, or

38-01493-21

20211498__

offering services
requiring licensure,
without a license.

419

499.0051 (2)

2nd

Knowing forgery of
transaction history,
transaction information,
or transaction
statement.

420

499.0051 (3)

2nd

Knowing purchase or
receipt of prescription
drug from unauthorized
person.

421

499.0051 (4)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

422

775.0875 (1)

3rd

Taking firearm from law
enforcement officer.

423

784.021 (1) (a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

424

784.021 (1) (b)

3rd

Aggravated assault;
intent to commit felony.

425

38-01493-21

20211498__

784.041

3rd

Felony battery; domestic
battery by
strangulation.

426

784.048 (3)

3rd

Aggravated stalking;
credible threat.

427

784.048 (5)

3rd

Aggravated stalking of
person under 16.

428

784.07 (2) (c)

2nd

Aggravated assault on
law enforcement officer.

429

784.074 (1) (b)

2nd

Aggravated assault on
sexually violent
predators facility
staff.

430

784.08 (2) (b)

2nd

Aggravated assault on a
person 65 years of age
or older.

431

784.081 (2)

2nd

Aggravated assault on
specified official or
employee.

432

784.082 (2)

2nd

Aggravated assault by
detained person on
visitor or other

38-01493-21

20211498__

detainee.

433

784.083 (2)

2nd

Aggravated assault on
code inspector.

434

787.02 (2)

3rd

False imprisonment;
restraining with purpose
other than those in s.
787.01.

435

790.115 (2) (d)

2nd

Discharging firearm or
weapon on school
property.

436

790.161 (2)

2nd

Make, possess, or throw
destructive device with
intent to do bodily harm
or damage property.

437

790.164 (1)

2nd

False report concerning
bomb, explosive, weapon
of mass destruction, act
of arson or violence to
state property, or use
of firearms in violent
manner.

438

790.19

2nd

Shooting or throwing
deadly missiles into

38-01493-21

20211498__

dwelling, vessels, or
vehicles.

439

794.011 (8) (a)

3rd

Solicitation of minor to
participate in sexual
activity by custodial
adult.

440

794.05 (1)

2nd

Unlawful sexual activity
with specified minor.

441

800.04 (5) (d)

3rd

Lewd or lascivious
molestation; victim 12
years of age or older
but less than 16 years
of age; offender less
than 18 years.

442

800.04 (6) (b)

2nd

Lewd or lascivious
conduct; offender 18
years of age or older.

443

806.031 (2)

2nd

Arson resulting in great
bodily harm to
firefighter or any other
person.

444

810.02 (3) (c)

2nd

Burglary of occupied
structure; unarmed; no

38-01493-21

20211498__

assault or battery.

445

810.145 (8) (b)

2nd

Video voyeurism; certain
minor victims; 2nd or
subsequent offense.

446

812.014 (2) (b) 1.

2nd

Property stolen \$20,000
or more, but less than
\$100,000, grand theft in
2nd degree.

447

812.014 (6)

2nd

Theft; property stolen
\$3,000 or more;
coordination of others.

448

812.015 (9) (a)

2nd

Retail theft; property
stolen \$750 or more;
second or subsequent
conviction.

449

812.015 (9) (b)

2nd

Retail theft; aggregated
property stolen within
30 days is \$3,000 or
more; coordination of
others.

450

812.13 (2) (c)

2nd

Robbery, no firearm or
other weapon (strong-arm
robbery).

38-01493-21

20211498__

451

817.4821(5)

2nd

Possess cloning
paraphernalia with
intent to create cloned
cellular telephones.

452

817.505(4)(b)

2nd

Patient brokering; 10 or
more patients.

453

825.102(1)

3rd

Abuse of an elderly
person or disabled
adult.

454

825.102(3)(c)

3rd

Neglect of an elderly
person or disabled
adult.

455

825.1025(3)

3rd

Lewd or lascivious
molestation of an
elderly person or
disabled adult.

456

825.103(3)(c)

3rd

Exploiting an elderly
person or disabled adult
and property is valued
at less than \$10,000.

457

827.03(2)(c)

3rd

Abuse of a child.

458

38-01493-21

20211498__

827.03 (2) (d)

3rd

Neglect of a child.

827.071 (2) & (3)

2nd

Use or induce a child in
a sexual performance, or
promote or direct such
performance.

836.05

2nd

Threats; extortion.

836.10

2nd

Written threats to kill,
do bodily injury, or
conduct a mass shooting
or an act of terrorism.

843.12

3rd

Aids or assists person
to escape.

847.011

3rd

Distributing, offering
to distribute, or
possessing with intent
to distribute obscene
materials depicting
minors.

847.012

3rd

Knowingly using a minor
in the production of
materials harmful to
minors.

	38-01493-21		20211498__
	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
466	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
467	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
468	944.40	2nd	Escapes.
469	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
470	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive)

38-01493-21

20211498__

into correctional
facility.

951.22 (1) (i)

3rd

Firearm or weapon
introduced into county
detention facility.

(g) LEVEL 7

Florida
Statute

Felony
Degree

Description

316.027 (2) (c)

1st

Accident involving death,
failure to stop; leaving
scene.

316.193 (3) (c) 2.

3rd

DUI resulting in serious
bodily injury.

316.1935 (3) (b)

1st

Causing serious bodily
injury or death to another
person; driving at high
speed or with wanton
disregard for safety while
fleeing or attempting to
elude law enforcement
officer who is in a patrol
vehicle with siren and
lights activated.

38-01493-21

20211498__

478

327.35 (3) (c) 2.

3rd

Vessel BUI resulting in
serious bodily injury.

479

402.319 (2)

2nd

Misrepresentation and
negligence or intentional
act resulting in great
bodily harm, permanent
disfiguration, permanent
disability, or death.

480

409.920
(2) (b) 1.a.

3rd

Medicaid provider fraud;
\$10,000 or less.

481

409.920
(2) (b) 1.b.

2nd

Medicaid provider fraud;
more than \$10,000, but
less than \$50,000.

482

456.065 (2)

3rd

Practicing a health care
profession without a
license.

483

456.065 (2)

2nd

Practicing a health care
profession without a
license which results in
serious bodily injury.

484

458.327 (1)

3rd

Practicing medicine
without a license.

38-01493-21

20211498__

485

459.013 (1)

3rd

Practicing osteopathic
medicine without a
license.

486

460.411 (1)

3rd

Practicing chiropractic
medicine without a
license.

487

461.012 (1)

3rd

Practicing podiatric
medicine without a
license.

488

462.17

3rd

Practicing naturopathy
without a license.

489

463.015 (1)

3rd

Practicing optometry
without a license.

490

464.016 (1)

3rd

Practicing nursing without
a license.

491

465.015 (2)

3rd

Practicing pharmacy
without a license.

492

466.026 (1)

3rd

Practicing dentistry or
dental hygiene without a
license.

493

38-01493-21

20211498__

467.201

3rd

Practicing midwifery
without a license.

468.366

3rd

Delivering respiratory
care services without a
license.

483.828 (1)

3rd

Practicing as clinical
laboratory personnel
without a license.

483.901 (7)

3rd

Practicing medical physics
without a license.

484.013 (1) (c)

3rd

Preparing or dispensing
optical devices without a
prescription.

484.053

3rd

Dispensing hearing aids
without a license.

494.0018 (2)

1st

Conviction of any
violation of chapter 494
in which the total money
and property unlawfully
obtained exceeded \$50,000
and there were five or
more victims.

38-01493-21

20211498__

560.123 (8) (b) 1.

3rd

Failure to report currency
or payment instruments
exceeding \$300 but less
than \$20,000 by a money
services business.

501

560.125 (5) (a)

3rd

Money services business by
unauthorized person,
currency or payment
instruments exceeding \$300
but less than \$20,000.

502

655.50 (10) (b) 1.

3rd

Failure to report
financial transactions
exceeding \$300 but less
than \$20,000 by financial
institution.

503

775.21 (10) (a)

3rd

Sexual predator; failure
to register; failure to
renew driver license or
identification card; other
registration violations.

504

775.21 (10) (b)

3rd

Sexual predator working
where children regularly
congregate.

505

775.21 (10) (g)

3rd

Failure to report or

38-01493-21

20211498__

providing false
information about a sexual
predator; harbor or
conceal a sexual predator.

506

782.051 (3)

2nd

Attempted felony murder of
a person by a person other
than the perpetrator or
the perpetrator of an
attempted felony.

507

782.07 (1)

2nd

Killing of a human being
by the act, procurement,
or culpable negligence of
another (manslaughter).

508

782.071

2nd

Killing of a human being
or unborn child by the
operation of a motor
vehicle in a reckless
manner (vehicular
homicide).

509

782.072

2nd

Killing of a human being
by the operation of a
vessel in a reckless
manner (vessel homicide).

510

784.045 (1) (a) 1.

2nd

Aggravated battery;

38-01493-21

20211498__

intentionally causing
great bodily harm or
disfigurement.

511

784.045 (1) (a) 2.

2nd

Aggravated battery; using
deadly weapon.

512

784.045 (1) (b)

2nd

Aggravated battery;
perpetrator aware victim
pregnant.

513

784.048 (4)

3rd

Aggravated stalking;
violation of injunction or
court order.

514

784.048 (7)

3rd

Aggravated stalking;
violation of court order.

515

784.07 (2) (d)

1st

Aggravated battery on law
enforcement officer.

516

784.074 (1) (a)

1st

Aggravated battery on
sexually violent predators
facility staff.

517

784.08 (2) (a)

1st

Aggravated battery on a
person 65 years of age or
older.

518

	38-01493-21		20211498__
519	784.081 (1)	1st	Aggravated battery on specified official or employee.
520	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
521	784.083 (1)	1st	Aggravated battery on code inspector.
522	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
523	787.06 (3) (e) 2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
524	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07 (1) or (2).
	790.16 (1)	1st	Discharge of a machine gun under specified

38-01493-21

20211498__

circumstances.

525

790.165 (2)

2nd

Manufacture, sell,
possess, or deliver hoax
bomb.

526

790.165 (3)

2nd

Possessing, displaying, or
threatening to use any
hoax bomb while committing
or attempting to commit a
felony.

527

790.166 (3)

2nd

Possessing, selling,
using, or attempting to
use a hoax weapon of mass
destruction.

528

790.166 (4)

2nd

Possessing, displaying, or
threatening to use a hoax
weapon of mass destruction
while committing or
attempting to commit a
felony.

529

790.23

1st,PBL

Possession of a firearm by
a person who qualifies for
the penalty enhancements
provided for in s. 874.04.

530

	38-01493-21		20211498__
531	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
532	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
533	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
534	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
535	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12

38-01493-21

20211498__

years of age or older but
younger than 16 years;
offender 18 years or
older; prior conviction
for specified sex offense.

536

806.01 (2)

2nd

Maliciously damage
structure by fire or
explosive.

537

810.02 (3) (a)

2nd

Burglary of occupied
dwelling; unarmed; no
assault or battery.

538

810.02 (3) (b)

2nd

Burglary of unoccupied
dwelling; unarmed; no
assault or battery.

539

810.02 (3) (d)

2nd

Burglary of occupied
conveyance; unarmed; no
assault or battery.

540

810.02 (3) (e)

2nd

Burglary of authorized
emergency vehicle.

541

812.014 (2) (a) 1.

1st

Property stolen, valued at
\$100,000 or more or a
semitrailer deployed by a
law enforcement officer;

38-01493-21

20211498__

property stolen while
causing other property
damage; 1st degree grand
theft.

542

812.014 (2) (b) 2.

2nd

Property stolen, cargo
valued at less than
\$50,000, grand theft in
2nd degree.

543

812.014 (2) (b) 3.

2nd

Property stolen, emergency
medical equipment; 2nd
degree grand theft.

544

812.014 (2) (b) 4.

2nd

Property stolen, law
enforcement equipment from
authorized emergency
vehicle.

545

812.0145 (2) (a)

1st

Theft from person 65 years
of age or older; \$50,000
or more.

546

812.019 (2)

1st

Stolen property;
initiates, organizes,
plans, etc., the theft of
property and traffics in
stolen property.

547

38-01493-21

20211498__

812.131 (2) (a)

2nd

Robbery by sudden
snatching.

812.133 (2) (b)

1st

Carjacking; no firearm,
deadly weapon, or other
weapon.

817.034 (4) (a) 1.

1st

Communications fraud,
value greater than
\$50,000.

817.234 (8) (a)

2nd

Solicitation of motor
vehicle accident victims
with intent to defraud.

817.234 (9)

2nd

Organizing, planning, or
participating in an
intentional motor vehicle
collision.

817.234 (11) (c)

1st

Insurance fraud; property
value \$100,000 or more.

817.2341

1st

(2) (b) & (3) (b)

Making false entries of
material fact or false
statements regarding
property values relating
to the solvency of an
insuring entity which are

38-01493-21

20211498__

a significant cause of the
insolvency of that entity.

554

817.535 (2) (a)

3rd

Filing false lien or other
unauthorized document.

555

817.611 (2) (b)

2nd

Traffic in or possess 15
to 49 counterfeit credit
cards or related
documents.

556

825.102 (3) (b)

2nd

Neglecting an elderly
person or disabled adult
causing great bodily harm,
disability, or
disfigurement.

557

825.103 (3) (b)

2nd

Exploiting an elderly
person or disabled adult
and property is valued at
\$10,000 or more, but less
than \$50,000.

558

827.03 (2) (b)

2nd

Neglect of a child causing
great bodily harm,
disability, or
disfigurement.

559

827.04 (3)

3rd

Impregnation of a child

38-01493-21

20211498__

under 16 years of age by
person 21 years of age or
older.

837.05 (2)

3rd

Giving false information
about alleged capital
felony to a law
enforcement officer.

838.015

2nd

Bribery.

838.016

2nd

Unlawful compensation or
reward for official
behavior.

838.021 (3) (a)

2nd

Unlawful harm to a public
servant.

838.22

2nd

Bid tampering.

843.0855 (2)

3rd

Impersonation of a public
officer or employee.

843.0855 (3)

3rd

Unlawful simulation of
legal process.

843.0855 (4)

3rd

Intimidation of a public
officer or employee.

	38-01493-21		20211498__
569	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
570	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
571	872.06	2nd	Abuse of a dead human body.
572	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
573	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or

38-01493-21

20211498__

(2)(c)5.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

574

893.13(1)(e)1.

1st

Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.

575

893.13(4)(a)

1st

Use or hire of minor; deliver to minor other controlled substance.

576

893.135(1)(a)1.

1st

Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

577

893.135
(1)(b)1.a.

1st

Trafficking in cocaine, more than 28 grams, less

38-01493-21

20211498__

than 200 grams.

578

893.135
(1) (c) 1.a.

1st

Trafficking in illegal
drugs, more than 4 grams,
less than 14 grams.

579

893.135
(1) (c) 2.a.

1st

Trafficking in
hydrocodone, 28 grams or
more, less than 50 grams.

580

893.135
(1) (c) 2.b.

1st

Trafficking in
hydrocodone, 50 grams or
more, less than 100 grams.

581

893.135
(1) (c) 3.a.

1st

Trafficking in oxycodone,
7 grams or more, less than
14 grams.

582

893.135
(1) (c) 3.b.

1st

Trafficking in oxycodone,
14 grams or more, less
than 25 grams.

583

893.135
(1) (c) 4.b. (I)

1st

Trafficking in fentanyl, 4
grams or more, less than
14 grams.

584

893.135
(1) (d) 1.a.

1st

Trafficking in
phencyclidine, 28 grams or
more, less than 200 grams.

38-01493-21

20211498__

585

893.135 (1) (e) 1.

1st

Trafficking in
methaqualone, 200 grams or
more, less than 5
kilograms.

586

893.135 (1) (f) 1.

1st

Trafficking in
amphetamine, 14 grams or
more, less than 28 grams.

587

893.135
(1) (g) 1.a.

1st

Trafficking in
flunitrazepam, 4 grams or
more, less than 14 grams.

588

893.135
(1) (h) 1.a.

1st

Trafficking in gamma-
hydroxybutyric acid (GHB),
1 kilogram or more, less
than 5 kilograms.

589

893.135
(1) (j) 1.a.

1st

Trafficking in 1,4-
Butanediol, 1 kilogram or
more, less than 5
kilograms.

590

893.135
(1) (k) 2.a.

1st

Trafficking in
Phenethylamines, 10 grams
or more, less than 200
grams.

591

38-01493-21

20211498__

893.135

1st

Trafficking in synthetic
cannabinoids, 280 grams or
more, less than 500 grams.

(1) (m) 2.a.

893.135

1st

Trafficking in synthetic
cannabinoids, 500 grams or
more, less than 1,000
grams.

(1) (m) 2.b.

893.135

1st

Trafficking in n-benzyl
phenethylamines, 14 grams
or more, less than 100
grams.

(1) (n) 2.a.

893.1351 (2)

2nd

Possession of place for
trafficking in or
manufacturing of
controlled substance.

896.101 (5) (a)

3rd

Money laundering,
financial transactions
exceeding \$300 but less
than \$20,000.

896.104 (4) (a) 1.

3rd

Structuring transactions
to evade reporting or
registration requirements,
financial transactions
exceeding \$300 but less

38-01493-21

20211498__

than \$20,000.

597

943.0435(4)(c)

2nd

Sexual offender vacating
permanent residence;
failure to comply with
reporting requirements.

598

943.0435(8)

2nd

Sexual offender; remains
in state after indicating
intent to leave; failure
to comply with reporting
requirements.

599

943.0435(9)(a)

3rd

Sexual offender; failure
to comply with reporting
requirements.

600

943.0435(13)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

601

943.0435(14)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.

38-01493-21

20211498__

602

944.607(9)

3rd

Sexual offender; failure
to comply with reporting
requirements.

603

944.607(10) (a)

3rd

Sexual offender; failure
to submit to the taking of
a digitized photograph.

604

944.607(12)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

605

944.607(13)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.

606

985.4815(10)

3rd

Sexual offender; failure
to submit to the taking of
a digitized photograph.

607

985.4815(12)

3rd

Failure to report or
providing false
information about a sexual

38-01493-21

20211498__

offender; harbor or
conceal a sexual offender.

985.4815(13)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.

(h) LEVEL 8

Florida
Statute

Felony
Degree

Description

316.193
(3) (c) 3.a.

2nd

DUI manslaughter.

316.1935(4) (b)

1st

Aggravated fleeing or
attempted eluding with
serious bodily injury or
death.

327.35(3) (c) 3.

2nd

Vessel BUI manslaughter.

499.0051(6)

1st

Knowing trafficking in
contraband prescription
drugs.

38-01493-21

20211498__

499.0051 (7)

1st

Knowing forgery of
prescription labels or
prescription drug labels.

617

560.123 (8) (b) 2.

2nd

Failure to report
currency or payment
instruments totaling or
exceeding \$20,000, but
less than \$100,000 by
money transmitter.

618

560.125 (5) (b)

2nd

Money transmitter
business by unauthorized
person, currency or
payment instruments
totaling or exceeding
\$20,000, but less than
\$100,000.

619

655.50 (10) (b) 2.

2nd

Failure to report
financial transactions
totaling or exceeding
\$20,000, but less than
\$100,000 by financial
institutions.

620

777.03 (2) (a)

1st

Accessory after the fact,
capital felony.

621

38-01493-21

20211498__

782.04 (4)

2nd

Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

782.051 (2)

1st

Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

782.071 (1) (b)

1st

Committing vehicular homicide and failing to render aid or give information.

782.072 (2)

1st

Committing vessel homicide and failing to render aid or give information.

38-01493-21

20211498__

787.06(3)(a)1.

1st

Human trafficking for
labor and services of a
child.

626

787.06(3)(b)

1st

Human trafficking using
coercion for commercial
sexual activity of an
adult.

627

787.06(3)(c)2.

1st

Human trafficking using
coercion for labor and
services of an
unauthorized alien adult.

628

787.06(3)(e)1.

1st

Human trafficking for
labor and services by the
transfer or transport of
a child from outside
Florida to within the
state.

629

787.06(3)(f)2.

1st

Human trafficking using
coercion for commercial
sexual activity by the
transfer or transport of
any adult from outside
Florida to within the
state.

630

38-01493-21

20211498__

790.161 (3)

1st

Discharging a destructive device which results in bodily harm or property damage.

631

794.011 (5) (a)

1st

Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

632

794.011 (5) (b)

2nd

Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.

633

794.011 (5) (c)

2nd

Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.

634

794.011 (5) (d)

1st

Sexual battery; victim 12 years of age or older;

38-01493-21

20211498__

offender does not use
physical force likely to
cause serious injury;
prior conviction for
specified sex offense.

635

794.08 (3)

2nd

Female genital
mutilation, removal of a
victim younger than 18
years of age from this
state.

636

800.04 (4) (b)

2nd

Lewd or lascivious
battery.

637

800.04 (4) (c)

1st

Lewd or lascivious
battery; offender 18
years of age or older;
prior conviction for
specified sex offense.

638

806.01 (1)

1st

Maliciously damage
dwelling or structure by
fire or explosive,
believing person in
structure.

639

810.02 (2) (a)

1st, PBL

Burglary with assault or
battery.

38-01493-21

20211498__

640

810.02 (2) (b)

1st, PBL

Burglary; armed with
explosives or dangerous
weapon.

641

810.02 (2) (c)

1st

Burglary of a dwelling or
structure causing
structural damage or
\$1,000 or more property
damage.

642

812.014 (2) (a) 2.

1st

Property stolen; cargo
valued at \$50,000 or
more, grand theft in 1st
degree.

643

812.13 (2) (b)

1st

Robbery with a weapon.

644

812.135 (2) (c)

1st

Home-invasion robbery, no
firearm, deadly weapon,
or other weapon.

645

817.505 (4) (c)

1st

Patient brokering; 20 or
more patients.

646

817.535 (2) (b)

2nd

Filing false lien or
other unauthorized
document; second or
subsequent offense.

38-01493-21

20211498__

647

817.535 (3) (a)

2nd

Filing false lien or
other unauthorized
document; property owner
is a public officer or
employee.

648

817.535 (4) (a) 1.

2nd

Filing false lien or
other unauthorized
document; defendant is
incarcerated or under
supervision.

649

817.535 (5) (a)

2nd

Filing false lien or
other unauthorized
document; owner of the
property incurs financial
loss as a result of the
false instrument.

650

817.568 (6)

2nd

Fraudulent use of
personal identification
information of an
individual under the age
of 18.

651

817.611 (2) (c)

1st

Traffic in or possess 50
or more counterfeit
credit cards or related

38-01493-21

20211498__

documents.

652

825.102 (2)

1st

Aggravated abuse of an
elderly person or
disabled adult.

653

825.1025 (2)

2nd

Lewd or lascivious
battery upon an elderly
person or disabled adult.

654

825.103 (3) (a)

1st

Exploiting an elderly
person or disabled adult
and property is valued at
\$50,000 or more.

655

837.02 (2)

2nd

Perjury in official
proceedings relating to
prosecution of a capital
felony.

656

837.021 (2)

2nd

Making contradictory
statements in official
proceedings relating to
prosecution of a capital
felony.

657

860.121 (2) (c)

1st

Shooting at or throwing
any object in path of
railroad vehicle

38-01493-21

20211498__

resulting in great bodily
harm.

860.16

1st

Aircraft piracy.

893.13 (1) (b)

1st

Sell or deliver in excess
of 10 grams of any
substance specified in s.
893.03(1) (a) or (b).

893.13 (2) (b)

1st

Purchase in excess of 10
grams of any substance
specified in s.
893.03(1) (a) or (b).

893.13 (6) (c)

1st

Possess in excess of 10
grams of any substance
specified in s.
893.03(1) (a) or (b).

893.135 (1) (a) 2.

1st

Trafficking in cannabis,
more than 2,000 lbs.,
less than 10,000 lbs.

893.135
(1) (b) 1.b.

1st

Trafficking in cocaine,
more than 200 grams, less
than 400 grams.

893.135

1st

Trafficking in illegal

38-01493-21

20211498__

(1) (c) 1.b.

drugs, more than 14
grams, less than 28
grams.

665

893.135

1st

(1) (c) 2.c.

Trafficking in
hydrocodone, 100 grams or
more, less than 300
grams.

666

893.135

1st

(1) (c) 3.c.

Trafficking in oxycodone,
25 grams or more, less
than 100 grams.

667

893.135

1st

(1) (c) 4.b. (II)

Trafficking in fentanyl,
14 grams or more, less
than 28 grams.

668

893.135

1st

(1) (d) 1.b.

Trafficking in
phencyclidine, 200 grams
or more, less than 400
grams.

669

893.135

1st

(1) (e) 1.b.

Trafficking in
methaqualone, 5 kilograms
or more, less than 25
kilograms.

670

893.135

1st

(1) (f) 1.b.

Trafficking in
amphetamine, 28 grams or

38-01493-21

20211498__

more, less than 200
grams.

671

893.135
(1) (g) 1.b.

1st

Trafficking in
flunitrazepam, 14 grams
or more, less than 28
grams.

672

893.135
(1) (h) 1.b.

1st

Trafficking in gamma-
hydroxybutyric acid
(GHB), 5 kilograms or
more, less than 10
kilograms.

673

893.135
(1) (j) 1.b.

1st

Trafficking in 1,4-
Butanediol, 5 kilograms
or more, less than 10
kilograms.

674

893.135
(1) (k) 2.b.

1st

Trafficking in
Phenethylamines, 200
grams or more, less than
400 grams.

675

893.135
(1) (m) 2.c.

1st

Trafficking in synthetic
cannabinoids, 1,000 grams
or more, less than 30
kilograms.

676

	38-01493-21		20211498__
677	893.135 (1) (n) 2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
678	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
679	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
680	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
681	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
	896.101 (5) (b)	2nd	Money laundering, financial transactions

38-01493-21

20211498__

totaling or exceeding
\$20,000, but less than
\$100,000.

682

896.104 (4) (a) 2.

2nd

Structuring transactions
to evade reporting or
registration
requirements, financial
transactions totaling or
exceeding \$20,000 but
less than \$100,000.

683

684 (i) LEVEL 9

685

Florida
Statute

Felony
Degree

Description

686

316.193
(3) (c) 3.b.

1st

DUI manslaughter; failing
to render aid or give
information.

687

327.35
(3) (c) 3.b.

1st

BUI manslaughter; failing
to render aid or give
information.

688

409.920
(2) (b) 1.c.

1st

Medicaid provider fraud;
\$50,000 or more.

689

499.0051 (8)

1st

Knowing sale or purchase

38-01493-21

20211498__

of contraband
prescription drugs
resulting in great bodily
harm.

690

560.123 (8) (b) 3.

1st

Failure to report
currency or payment
instruments totaling or
exceeding \$100,000 by
money transmitter.

691

560.125 (5) (c)

1st

Money transmitter
business by unauthorized
person, currency, or
payment instruments
totaling or exceeding
\$100,000.

692

655.50 (10) (b) 3.

1st

Failure to report
financial transactions
totaling or exceeding
\$100,000 by financial
institution.

693

775.0844

1st

Aggravated white collar
crime.

694

782.04 (1)

1st

Attempt, conspire, or
solicit to commit

38-01493-21

20211498__

premeditated murder.

695

782.04(3)

1st, PBL

Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

696

782.051(1)

1st

Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

697

782.07(2)

1st

Aggravated manslaughter of an elderly person or disabled adult.

698

787.01(1)(a)1.

1st, PBL

Kidnapping; hold for ransom or reward or as a shield or hostage.

699

787.01(1)(a)2.

1st, PBL

Kidnapping with intent to commit or facilitate commission of any felony.

700

38-01493-21

20211498__

787.01 (1) (a) 4.

1st, PBL

Kidnapping with intent to interfere with performance of any governmental or political function.

701

787.02 (3) (a)

1st, PBL

False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

702

787.06 (3) (c) 1.

1st

Human trafficking for labor and services of an unauthorized alien child.

703

787.06 (3) (d)

1st

Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.

704

787.06 (3) (f) 1.

1st, PBL

Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to

	38-01493-21		20211498__
			within the state.
705	790.161	1st	Attempted capital destructive device offense.
706	790.166 (2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
707	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
708	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
709	794.011 (4) (a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
710	794.011 (4) (b)	1st	Sexual battery, certain

38-01493-21

20211498__

circumstances; victim and
offender 18 years of age
or older.

711

794.011 (4) (c)

1st

Sexual battery, certain
circumstances; victim 12
years of age or older;
offender younger than 18
years.

712

794.011 (4) (d)

1st, PBL

Sexual battery, certain
circumstances; victim 12
years of age or older;
prior conviction for
specified sex offenses.

713

794.011 (8) (b)

1st, PBL

Sexual battery; engage in
sexual conduct with minor
12 to 18 years by person
in familial or custodial
authority.

714

794.08 (2)

1st

Female genital
mutilation; victim
younger than 18 years of
age.

715

800.04 (5) (b)

Life

Lewd or lascivious
molestation; victim less

38-01493-21

20211498__

than 12 years; offender
18 years or older.

716

812.13 (2) (a)

1st, PBL

Robbery with firearm or
other deadly weapon.

717

812.133 (2) (a)

1st, PBL

Carjacking; firearm or
other deadly weapon.

718

812.135 (2) (b)

1st

Home-invasion robbery
with weapon.

719

817.535 (3) (b)

1st

Filing false lien or
other unauthorized
document; second or
subsequent offense;
property owner is a
public officer or
employee.

720

817.535 (4) (a) 2.

1st

Filing false claim or
other unauthorized
document; defendant is
incarcerated or under
supervision.

721

817.535 (5) (b)

1st

Filing false lien or
other unauthorized
document; second or

38-01493-21

20211498__

subsequent offense; owner
of the property incurs
financial loss as a
result of the false
instrument.

722

817.568 (7)

2nd,
PBL

Fraudulent use of
personal identification
information of an
individual under the age
of 18 by his or her
parent, legal guardian,
or person exercising
custodial authority.

723

827.03 (2) (a)

1st

Aggravated child abuse.

724

847.0145 (1)

1st

Selling, or otherwise
transferring custody or
control, of a minor.

725

847.0145 (2)

1st

Purchasing, or otherwise
obtaining custody or
control, of a minor.

726

859.01

1st

Poisoning or introducing
bacteria, radioactive
materials, viruses, or
chemical compounds into

38-01493-21

20211498__

food, drink, medicine, or
water with intent to kill
or injure another person.

727

893.135

1st

Attempted capital
trafficking offense.

728

893.135 (1) (a) 3.

1st

Trafficking in cannabis,
more than 10,000 lbs.

729

893.135
(1) (b) 1.c.

1st

Trafficking in cocaine,
more than 400 grams, less
than 150 kilograms.

730

893.135
(1) (c) 1.c.

1st

Trafficking in illegal
drugs, more than 28
grams, less than 30
kilograms.

731

893.135
(1) (c) 2.d.

1st

Trafficking in
hydrocodone, 300 grams or
more, less than 30
kilograms.

732

893.135
(1) (c) 3.d.

1st

Trafficking in oxycodone,
100 grams or more, less
than 30 kilograms.

733

893.135

1st

Trafficking in fentanyl,

	38-01493-21		20211498__
	(1) (c) 4.b. (III)		28 grams or more.
734	893.135	1st	Trafficking in
	(1) (d) 1.c.		phencyclidine, 400 grams or more.
735	893.135	1st	Trafficking in
	(1) (e) 1.c.		methaqualone, 25 kilograms or more.
736	893.135	1st	Trafficking in
	(1) (f) 1.c.		amphetamine, 200 grams or more.
737	893.135	1st	Trafficking in gamma-
	(1) (h) 1.c.		hydroxybutyric acid (GHB), 10 kilograms or more.
738	893.135	1st	Trafficking in 1,4-
	(1) (j) 1.c.		Butanediol, 10 kilograms or more.
739	893.135	1st	Trafficking in
	(1) (k) 2.c.		Phenethylamines, 400 grams or more.
740	893.135	1st	Trafficking in synthetic
	(1) (m) 2.d.		cannabinoids, 30

38-01493-21

20211498__

kilograms or more.

741

893.135
(1) (n) 2.c.

1st

Trafficking in n-benzyl
phenethylamines, 200
grams or more.

742

896.101 (5) (c)

1st

Money laundering,
financial instruments
totaling or exceeding
\$100,000.

743

896.104 (4) (a) 3.

1st

Structuring transactions
to evade reporting or
registration
requirements, financial
transactions totaling or
exceeding \$100,000.

744

745 (j) LEVEL 10

746

Florida
StatuteFelony
Degree

Description

747

499.0051 (9)

1st

Knowing sale or purchase
of contraband
prescription drugs
resulting in death.

748

782.04 (2)

1st, PBL

Unlawful killing of

38-01493-21

20211498__

human; act is homicide,
unpremeditated.

749

782.07(3)

1st

Aggravated manslaughter
of a child.

750

787.01(1)(a)3.

1st, PBL

Kidnapping; inflict
bodily harm upon or
terrorize victim.

751

787.01(3)(a)

Life

Kidnapping; child under
age 13, perpetrator also
commits aggravated child
abuse, sexual battery,
or lewd or lascivious
battery, molestation,
conduct, or exhibition.

752

787.06(3)(g)

Life

Human trafficking for
commercial sexual
activity of a child
under the age of 18 or
mentally defective or
incapacitated person.

753

787.06(4)(a)

Life

Selling or buying of
minors into human
trafficking.

754

38-01493-21

20211498__

794.011(3)

Life

Sexual battery; victim
12 years or older,
offender uses or
threatens to use deadly
weapon or physical force
to cause serious injury.

812.135(2)(a)

1st, PBL

Home-invasion robbery
with firearm or other
deadly weapon.

876.32

1st

Treason against the
state.

Section 8. Section 921.0023, Florida Statutes, is amended
to read:

921.0023 Criminal Public Safety ~~Punishment~~ Code; ranking
unlisted felony offenses.—A felony offense committed on or after
October 1, 1998, that is not listed in s. 921.0022 is ranked
with respect to offense severity level by the Legislature,
commensurate with the harm or potential harm that is caused by
the offense to the community. Until the Legislature specifically
assigns an offense to a severity level in the offense severity
ranking chart, the severity level is within the following
parameters:

(1) A felony of the third degree within offense level 1.

(2) A felony of the second degree within offense level 4.

(3) A felony of the first degree within offense level 7.

(4) A felony of the first degree punishable by life within

38-01493-21

20211498__

offense level 9.

(5) A life felony within offense level 10.

Section 9. Section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Public Safety ~~Punishment~~ Code; worksheet computations; scoresheets.—

(1)(a) The Criminal Public Safety ~~Punishment~~ Code worksheet is used to compute the subtotal and total sentence points as follows:

FLORIDA Criminal Public Safety ~~Punishment~~ Code
WORKSHEET

OFFENSE SCORE

Primary Offense

Level	Sentence Points		Total
10	116	=	.....
9	92	=	.....
8	74	=	.....
7	56	=	.....
6	36	=	.....

38-01493-21

20211498__

5	28	=	.....
4	22	=	.....
3	16	=	.....
2	10	=	.....
1	4	=	.....

Total

Additional Offenses

Level	Sentence Points	Counts	Total
10	58	x	.....
9	46	x	.....
8	37	x	.....
7	28	x	.....
6	18	x	.....

38-01493-21

20211498__

5	5.4	x	....	=	....
4	3.6	x	....	=	....
3	2.4	x	....	=	....
2	1.2	x	....	=	....
1	0.7	x	....	=	....
M	0.2	x	....	=	....

Total

Victim Injury

Level	Sentence Points		Number		Total
2nd degree murder- death	240	x	....	=	....
Death	120	x	....	=	....
Severe	40	x	....	=	....

38-01493-21

20211498__

Moderate	18	x	....	=	....
Slight	4	x	....	=	....
Sexual penetration	80	x	....	=	....
Sexual contact	40	x	....	=	....

Total

Primary Offense + Additional Offenses + Victim Injury =
TOTAL OFFENSE SCORE

PRIOR RECORD SCORE

Prior Record

Level	Sentence Points		Number		Total
10	29	x	....	=	....
9	23	x	....	=	....
8	19	x	....	=	....

38-01493-21

20211498__

7	14	x	....	=	....
6	9	x	....	=	....
5	3.6	x	....	=	....
4	2.4	x	....	=	....
3	1.6	x	....	=	....
2	0.8	x	....	=	....
1	0.5	x	....	=	....
M	0.2	x	....	=	....

Total

TOTAL OFFENSE SCORE.....
 TOTAL PRIOR RECORD SCORE.....
 LEGAL STATUS.....
 COMMUNITY SANCTION VIOLATION.....
 PRIOR SERIOUS FELONY.....
 PRIOR CAPITAL FELONY.....
 FIREARM OR SEMIAUTOMATIC WEAPON.....

38-01493-21

20211498__

858 SUBTOTAL.....

859

860 PRISON RELEASEE REOFFENDER (no) (yes).....

861 VIOLENT CAREER CRIMINAL (no) (yes).....

862 HABITUAL VIOLENT OFFENDER (no) (yes).....

863 HABITUAL OFFENDER (no) (yes).....

864 DRUG TRAFFICKER (no) (yes) (x multiplier).....

865 LAW ENF. PROTECT. (no) (yes) (x multiplier).....

866 MOTOR VEHICLE THEFT (no) (yes) (x multiplier).....

867 CRIMINAL GANG OFFENSE (no) (yes) (x multiplier).....

868 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no) (yes)

869 (x multiplier).....

870 ADULT-ON-MINOR SEX OFFENSE (no) (yes) (x multiplier).....

871

872 TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

874

875

876 Legal status points are assessed when any form of legal status

877 existed at the time the offender committed an offense before the

878 court for sentencing. Four (4) sentence points are assessed for

879 an offender's legal status.

880

881 Community sanction violation points are assessed when a

882 community sanction violation is before the court for sentencing.

883 Six (6) sentence points are assessed for each community sanction

884 violation and each successive community sanction violation,

885 unless any of the following apply:

- 886 1. If the community sanction violation includes a new

38-01493-21

20211498__

felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the

38-01493-21

20211498__

offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine

38-01493-21

20211498__

gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

38-01493-21

20211498__

974 Offense related to a criminal gang: If the offender is convicted
975 of the primary offense and committed that offense for the
976 purpose of benefiting, promoting, or furthering the interests of
977 a criminal gang as defined in s. 874.03, the subtotal sentence
978 points are multiplied by 1.5. If applying the multiplier results
979 in the lowest permissible sentence exceeding the statutory
980 maximum sentence for the primary offense under chapter 775, the
981 court may not apply the multiplier and must sentence the
982 defendant to the statutory maximum sentence.

984 Domestic violence in the presence of a child: If the offender is
985 convicted of the primary offense and the primary offense is a
986 crime of domestic violence, as defined in s. 741.28, which was
987 committed in the presence of a child under 16 years of age who
988 is a family or household member as defined in s. 741.28(3) with
989 the victim or perpetrator, the subtotal sentence points are
990 multiplied by 1.5.

992 Adult-on-minor sex offense: If the offender was 18 years of age
993 or older and the victim was younger than 18 years of age at the
994 time the offender committed the primary offense, and if the
995 primary offense was an offense committed on or after October 1,
996 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
997 violation involved a victim who was a minor and, in the course
998 of committing that violation, the defendant committed a sexual
999 battery under chapter 794 or a lewd act under s. 800.04 or s.
1000 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
1001 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
1002 800.04; or s. 847.0135(5), the subtotal sentence points are

38-01493-21

20211498__

multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under

38-01493-21

20211498__

1032 this section is not eligible for any form of discretionary early
1033 release, except executive clemency or conditional medical
1034 release under s. 947.149.

1035 (3) A single digitized scoresheet shall be prepared for
1036 each defendant to determine the permissible range for the
1037 sentence that the court may impose, except that if the defendant
1038 is before the court for sentencing for more than one felony and
1039 the felonies were committed under more than one version or
1040 revision of the guidelines or the code, separate digitized
1041 scoresheets must be prepared. The scoresheet or scoresheets must
1042 cover all the defendant's offenses pending before the court for
1043 sentencing. The state attorney shall prepare the digitized
1044 scoresheet or scoresheets, which must be presented to the
1045 defense counsel for review for accuracy in all cases unless the
1046 judge directs otherwise. The defendant's scoresheet or
1047 scoresheets must be approved and signed by the sentencing judge.

1048 (4) The Department of Corrections, in consultation with the
1049 Office of the State Courts Administrator, state attorneys, and
1050 public defenders, must develop and submit the revised digitized
1051 Criminal Public Safety ~~Punishment~~ Code scoresheet to the Supreme
1052 Court for approval by June 15 of each year, as necessary. The
1053 digitized scoresheet shall have individual, structured data
1054 cells for each data field on the scoresheet. Upon the Supreme
1055 Court's approval of the revised digitized scoresheet, the
1056 Department of Corrections shall produce and provide the revised
1057 digitized scoresheets by September 30 of each year, as
1058 necessary. Digitized scoresheets must include individual data
1059 cells to indicate whether any prison sentence imposed includes a
1060 mandatory minimum sentence or the sentence imposed was a

38-01493-21

20211498__

downward departure from the lowest permissible sentence under the Criminal Public Safety ~~Punishment~~ Code.

(5) The Department of Corrections shall make available the digitized Criminal Public Safety ~~Punishment~~ Code scoresheets to those persons charged with the responsibility for preparing scoresheets.

(6) The clerk of the circuit court shall transmit a complete and accurate digitized copy of the Criminal Public Safety ~~Punishment~~ Code scoresheet used in each sentencing proceeding to the Department of Corrections. Scoresheets must be electronically transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.

(7) A digitized sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. The individual offender's digitized Criminal Public Safety ~~Punishment~~ Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be included with the uniform judgment and sentence form provided to the Department of Corrections.

Section 10. Section 921.0025, Florida Statutes, is amended to read:

921.0025 Adoption and implementation of revised sentencing scoresheets.—Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, as revised by the Supreme Court, and any other rule pertaining to the preparation and submission of felony sentencing scoresheets, are adopted and implemented in accordance with this chapter for application to the Criminal

38-01493-21

20211498__

Public Safety ~~Punishment~~ Code.

Section 11. Paragraph (m) of subsection (2) of section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Public Safety ~~Punishment~~ Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

Section 12. Section 921.0027, Florida Statutes, is amended to read:

921.0027 Criminal Public Safety ~~Punishment~~ Code and revisions; applicability.—The Florida Criminal Public Safety ~~Punishment~~ Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Public Safety ~~Punishment~~ Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision. Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the Criminal Public Safety ~~Punishment~~ Code in effect on

38-01493-21

20211498__

the beginning date of the criminal activity.

Section 13. Subsection (1) of section 924.06, Florida Statutes, is amended to read:

924.06 Appeal by defendant.—

(1) A defendant may appeal from:

(a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);

(b) An order granting probation under chapter 948;

(c) An order revoking probation under chapter 948;

(d) A sentence, on the ground that it is illegal; or

(e) A sentence imposed under s. 921.0024 of the Criminal Public Safety ~~Punishment~~ Code which exceeds the statutory maximum penalty provided in s. 775.082 for an offense at conviction, or the consecutive statutory maximums for offenses at conviction, unless otherwise provided by law.

Section 14. Paragraph (i) of subsection (1) of section 924.07, Florida Statutes, is amended to read:

924.07 Appeal by state.—

(1) The state may appeal from:

(i) A sentence imposed below the lowest permissible sentence established by the Criminal Public Safety ~~Punishment~~ Code under chapter 921.

Section 15. Paragraph (c) of subsection (3) and paragraph (e) of subsection (5) of section 944.17, Florida Statutes, are amended to read:

944.17 Commitments and classification; transfers.—

(3)

(c)1. When the highest ranking offense for which the

38-01493-21

20211498__

prisoner is convicted is a felony, the trial court shall sentence the prisoner pursuant to the Criminal Public Safety ~~Punishment~~ Code in chapter 921.

2. When the highest ranking offense for which the prisoner is convicted is a misdemeanor, the trial court shall sentence the prisoner pursuant to s. 775.082(4).

(5) The department shall also refuse to accept a person into the state correctional system unless the following documents are presented in a completed form by the sheriff or chief correctional officer, or a designated representative, to the officer in charge of the reception process. The department may, at its discretion, receive such documents electronically:

(e) A copy of the Criminal Public Safety ~~Punishment~~ Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets.

In addition, the sheriff or other officer having such person in charge shall also deliver with the foregoing documents any available presentence investigation reports as described in s. 921.231 and any attached documents. After a prisoner is admitted into the state correctional system, the department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Children and Families, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs. An agency that receives such a request from

38-01493-21

20211498__

the department must provide the information requested. The department may, at its discretion, receive such information electronically.

Section 16. Paragraph (a) of subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Public Safety ~~Punishment~~ Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, the offense is a nonviolent felony, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 17. Section 948.015, Florida Statutes, is amended to read:

948.015 Presentence investigation reports.—The circuit court, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and has a lowest permissible sentence under the Criminal Public Safety ~~Punishment~~ Code of any nonstate prison sanction, may refer the case to the department for investigation or recommendation. Upon such referral, the department shall make

38-01493-21

20211498__

the following report in writing at a time specified by the court prior to sentencing. The full report shall include:

(1) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made; nature of the plea agreement, including the number of counts waived, the pleas agreed upon, the sentence agreed upon, and any additional terms of agreement; and, at the offender's discretion, his or her version and explanation of the criminal activity.

(2) The offender's sentencing status, including whether the offender is a first offender, a habitual or violent offender, a youthful offender, or is currently on probation.

(3) The offender's prior record of arrests and convictions.

(4) The offender's educational background.

(5) The offender's employment background, including any military record, present employment status, and occupational capabilities.

(6) The offender's financial status, including total monthly income and estimated total debts.

(7) The social history of the offender, including his or her family relationships, marital status, interests, and activities.

(8) The residence history of the offender.

(9) The offender's medical history and, as appropriate, a psychological or psychiatric evaluation.

(10) Information about the environments to which the offender might return or to which the offender could be sent should a sentence of nonincarceration or community supervision

38-01493-21

20211498__

be imposed by the court, and consideration of the offender's plan concerning employment supervision and treatment.

(11) Information about any resources available to assist the offender, such as:

(a) Treatment centers.

(b) Residential facilities.

(c) Career training programs.

(d) Special education programs.

(e) Services that may preclude or supplement commitment to the department.

(12) The views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his or her criminal activity.

(13) An explanation of the offender's criminal record, if any, including his or her version and explanation of any previous offenses.

(14) A statement regarding the extent of any victim's loss or injury.

(15) A recommendation as to disposition by the court. The department shall make a written determination as to the reasons for its recommendation, and shall include an evaluation of the following factors:

(a) The appropriateness or inappropriateness of community facilities, programs, or services for treatment or supervision for the offender.

(b) The ability or inability of the department to provide an adequate level of supervision for the offender in the community and a statement of what constitutes an adequate level of supervision.

38-01493-21

20211498__

(c) The existence of other treatment modalities which the offender could use but which do not exist at present in the community.

Section 18. Paragraph (j) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(j)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the court may order the defendant to successfully complete a postadjudicatory treatment-based drug court program if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The offender's Criminal Public Safety ~~Punishment~~ Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer after including points for the violation;

c. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

d. The court determines that the offender is amenable to the services of a postadjudicatory treatment-based drug court program;

e. The court has explained the purpose of the program to the offender and the offender has agreed to participate; and

f. The offender is otherwise qualified to participate in the program under the provisions of s. 397.334(3).

38-01493-21

20211498__

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory treatment-based drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 19. Subsection (1) of section 948.20, Florida Statutes, is amended to read:

948.20 Drug offender probation.—

(1) If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent felony if such nonviolent felony is committed on or after July 1, 2009, and notwithstanding s. 921.0024 the defendant's Criminal Public Safety ~~Punishment~~ Code scoresheet total sentence points are 60 points or fewer, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt. In either case, the court may also stay and withhold the imposition of sentence and place the defendant on drug offender probation or into a postadjudicatory treatment-based drug court program if the defendant otherwise qualifies. As used in this section, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 20. Paragraph (c) of subsection (2) of section 948.51, Florida Statutes, is amended to read:

948.51 Community corrections assistance to counties or

38-01493-21

20211498__

county consortiums.—

(2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A county, or a consortium of two or more counties, may contract with the Department of Corrections for community corrections funds as provided in this section. In order to enter into a community corrections partnership contract, a county or county consortium must have a public safety coordinating council established under s. 951.26 and must designate a county officer or agency to be responsible for administering community corrections funds received from the state. The public safety coordinating council shall prepare, develop, and implement a comprehensive public safety plan for the county, or the geographic area represented by the county consortium, and shall submit an annual report to the Department of Corrections concerning the status of the program. In preparing the comprehensive public safety plan, the public safety coordinating council shall cooperate with the juvenile justice circuit advisory board established under s. 985.664 in order to include programs and services for juveniles in the plan. To be eligible for community corrections funds under the contract, the initial public safety plan must be approved by the governing board of the county, or the governing board of each county within the consortium, and the Secretary of Corrections based on the requirements of this section. If one or more other counties develop a unified public safety plan, the public safety coordinating council shall submit a single application to the department for funding. Continued contract funding shall be pursuant to subsection (5). The plan for a county or county consortium must cover at least a 5-year period and must include:

38-01493-21

20211498__

(c) Specific goals and objectives for reducing the projected percentage of commitments to the state prison system of persons with low total sentencing scores pursuant to the Criminal Public Safety ~~Punishment~~ Code.

Section 21. Subsection (3) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(3) The provisions of this section shall not be used to impose a greater sentence than the permissible sentence range as established by the Criminal Public Safety ~~Punishment~~ Code pursuant to chapter 921 unless reasons are explained in writing by the trial court judge which reasonably justify departure. A sentence imposed outside of the code is subject to appeal pursuant to s. 924.06 or s. 924.07.

Section 22. Subsection (4) of section 985.465, Florida Statutes, is amended to read:

985.465 Juvenile correctional facilities or juvenile prison.—A juvenile correctional facility or juvenile prison is a physically secure residential commitment program with a designated length of stay from 18 months to 36 months, primarily serving children 13 years of age to 19 years of age or until the jurisdiction of the court expires. Each child committed to this level must meet one of the following criteria:

(4) The child is at least 13 years of age at the time of the disposition for the current offense, the child is eligible for prosecution as an adult for the current offense, and the current offense is ranked at level 7 or higher on the Criminal Public Safety ~~Punishment~~ Code offense severity ranking chart pursuant to s. 921.0022.

38-01493-21

20211498__

Section 23. Section 921.002, Florida Statutes, is amended to read:

921.002 The Criminal Public Safety ~~Punishment~~ Code.—The Criminal Public Safety ~~Punishment~~ Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Public Safety ~~Punishment~~ Code embodies the principles that:

(a) Sentencing is neutral with respect to race, gender, and social and economic status.

(b) The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of public safety ~~punishment~~.

(c) The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

(d) The severity of the sentence increases with the length and nature of the offender's prior record.

(e) The sentence imposed by the sentencing judge reflects

38-01493-21

20211498__

the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4). The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Public Safety ~~Punishment~~ Code.

(f) Departures below the lowest permissible sentence established by the code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence is a preponderance of the evidence.

(g) The trial court judge may impose a sentence up to and including the statutory maximum for any offense, including an offense that is before the court due to a violation of probation or community control.

(h) A sentence may be appealed on the basis that it departs from the Criminal Public Safety ~~Punishment~~ Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1).

(i) Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

(2) When a defendant is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the former sentencing guidelines

38-01493-21

20211498__

or the code, each felony shall be sentenced under the guidelines or the code in effect at the time the particular felony was committed. This subsection does not apply to sentencing for any capital felony.

(3) A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026. The level of proof necessary to establish facts supporting the mitigation of a sentence is a preponderance of the evidence. When multiple reasons exist to support the mitigation, the mitigation shall be upheld when at least one circumstance or factor justifies the mitigation regardless of the presence of other circumstances or factors found not to justify mitigation. Any sentence imposed below the lowest permissible sentence must be explained in writing by the trial court judge.

(4) (a) The Department of Corrections shall report on trends in sentencing practices and sentencing score thresholds and provide an analysis on the sentencing factors considered by the courts and shall submit this information to the Legislature by October 1 of each year.

(b) The Criminal Justice Estimating Conference, with the assistance of the Department of Corrections, shall estimate the impact of any proposed change to the Criminal Public Safety ~~Punishment~~ Code on future rates of incarceration and on the prison population. The Criminal Justice Estimating Conference shall base its projections on historical data concerning sentencing practices which have been accumulated by the Department of Corrections and other relevant data from other

38-01493-21

20211498__

state agencies and records of the Department of Corrections which disclose the average time served for offenses covered by any proposed changes to the Criminal Public Safety ~~Punishment~~ Code.

(c) In order to produce projects that are either required by law or requested by the Legislature to assist the Legislature in making modifications to the Criminal Public Safety ~~Punishment~~ Code, the Department of Corrections is authorized to collect and evaluate Criminal Public Safety ~~Punishment~~ Code scoresheets from each of the judicial circuits after sentencing. Beginning in 1999, by October 1 of each year, the Department of Corrections shall provide an annual report to the Legislature that shows the rate of compliance of each judicial circuit in providing scoresheets to the department.

Section 24. Subsection (2) of section 893.20, Florida Statutes, is amended to read:

893.20 Continuing criminal enterprise.—

(2) A person who commits the offense of engaging in a continuing criminal enterprise commits ~~is guilty of~~ a life felony, punishable pursuant to the Criminal Public Safety ~~Punishment~~ Code and by a fine of \$500,000.

Section 25. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

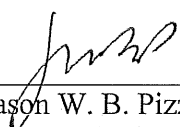
To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 9, 2021

I respectfully request that **Senate Bill #1498**, relating to Renaming the Criminal Punishment Code, be placed on the:

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



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

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 1498

Bill Number (if applicable)

Topic Renaming Criminal Punishment Code

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P. O. Box 10788

Phone 850-570-9560

Street

Tallahassee

FL

32303

Email carrie.boyd@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2021
Meeting Date

SB 1498
Bill Number (if applicable)

Topic Renaming the criminal punishment code Amendment Barcode (if applicable)

Name Christine Koester

Job Title Ministry Assistant

Address 3313 SE 3rd Street
Street

Phone 954 708 4168

Pompano Beach FL 33062
City State Zip

Email Christine_koester@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2021
Meeting Date

SB1498
Bill Number (if applicable)

Topic renaming the Criminal Punishment Code Amendment Barcode (if applicable)

Name Lori Figueroa

Job Title _____

Address 12 Juniper Pass Dr.
Street

Phone (352) 216-2196

Ocala Florida 34480
City State Zip

Email lf10122965@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2021
Meeting Date

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

SB 1498
Bill Number (if applicable)

Topic Renaming the Criminal punishment code Amendment Barcode (if applicable)

Name Madeline Kline

Job Title Director

Address 1741 NW 48th Court Phone 954-573-3810
Street

Pompano Beach Fl. 33064 Email madeline@calvaryfl.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 22, 2021
Meeting Date

SB1498
Bill Number (if applicable)

Topic Renaming the criminal punishment code

Amendment Barcode (if applicable)

Name Shannon Pettifere

Job Title _____

Address 3405 Demi-Jitz Ct.

Phone 407 484 4887

Street

Orlando

Fl.

32805

City

State

Zip

Email shannoncarson18@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

SB1498

Bill Number (if applicable)

Topic Renaming the Criminal Punishment Code

Amendment Barcode (if applicable)

Name Laurette Philipson

Job Title

352-533-7202

Address 7240 West Wind Dr

Street

Phone

Port Richey FL 34868

City

State

Zip

Email advocatephilipson@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1532

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

SUBJECT: Child Support

DATE: March 24, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1532 makes numerous changes to the Child Support Program, which is administered by the Department of Revenue, (DOR) Florida's Title IV-D agency. As the state's Title IV-D agency, the DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.

The changes made by the bill to the Title IV-D program:

- Specify that affidavits of default or a default in payments are not required for Title IV-D cases to have accounts established in the Clerk of Court Child Support Collection System and that Title IV-D payments are processed through the State Disbursement Unit;
- Amend the statements the DOR is required to certify when requesting a consumer report, to conform to the federal Fair Credit Reporting Act;
- Allow notices relating to consumer reports to be made by regular mail instead of by certified or registered mail;
- Prohibit the state from treating incarceration as voluntary unemployment when a support order is established or modified, unless limited exceptions apply;
- Codify how Social Security dependent benefits affect the amount of child support ordered; the extent to which the parent receives credit for the benefits; and how a parent obtains credit for dependent benefits;
- Update the process for rendering final orders;

- Authorize the use of electronic notices of garnishment to consenting financial institutions;
- Revise the data exchange process between the DOR and the Department of Financial Services relating to the use of unclaimed property for past due child support;
- Permit the DOR to transmit confidential and exempt information with limited exception by unencrypted electronic mail to a parent, caregiver, or other person authorized to receive information about DOR services upon his or her consent;
- Require an entity to report to the State Directory of New Hires nonemployees who perform services and are paid \$600 or more in a calendar year.

Additionally, the bill expands the authorized topics under the parent education and family stabilization course that is required for parents of minor children seeking a dissolution of marriage. The bill requires the parents of children with special needs or emotional concerns to select a course that is tailored towards those needs. Moreover, a court may authorize a parent to take an additional course covering those needs, separate from the required parent education and family stabilization course.

The fiscal impact of the bill on state and local governments is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Support of Children (Section 1)

Title IV-D cases

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.¹ The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.² The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.³

¹ 42 U.S.C. s. 651, et. seq.

² *Id.*

³ U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), An Office of the Administration for Children & Families, *About the Office of Child Support Enforcement*, (February 2, 2021) available at <https://www.acf.hhs.gov/css/about> (last visited Mar. 8, 2021).

As Florida's IV-D agency,⁴ the Department of Revenue (DOR) is responsible for collecting and enforcing child support.⁵ The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year.⁶ The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;
- Collect and disburse child support payments; and
- Monitor and enforce child support orders.⁷

Child support services are available even if a parent lives in another state or country. To receive the no-cost services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.⁸

The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.⁹

Depository Role in IV-D Cases

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU)¹⁰ administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligor must make all child support payments in IV-D cases to the SDU.¹¹

Upon request of the parties, the court may order that child support payments be made through the depository or directly to the obligee if it is in the child's best interest.¹² If such an order is made, any party or the DOR in a IV-D case may file an affidavit with the depository¹³ that alleges the

⁴ Section 409.2557(1), F.S.

⁵ See s. 61.13, F.S.

⁶ The DOR, *Child Support Program: Overview 2019*, p. 6, 19, available at https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x_Child_Support_Overview_Presentation_External_2020_FFY_2018-19.pdf (last visited Mar. 8, 2021).

⁷ *Id.* at 7.

⁸ *Id.* at 5.

⁹ The DOR, *About the Child Support Program*, available at https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx (last visited Mar. 8, 2021).

¹⁰ Section 61.046(20), F.S., provides that the "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

¹¹ Sections. 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 USC 654b(a)(1)(A).

¹² Section 61.13(1)(d), F.S.

¹³ Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., created by special act of the Legislature or other entity established before June 1, 1985, to perform depository

obligor has defaulted on his or her child support payment obligations and that requests the payments be made through the depository.¹⁴ The party must submit a copy of the affidavit to the court and to all parties.¹⁵ Fifteen days after receipt of the affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the State Disbursement Unit.¹⁶

When a private case with a support order payable directly to the parent who is owed support becomes a IV-D case, the clerk's depository must create payment accounts on the Clerk of Court Child Support Collection System (CLERC System) for payments to be disbursed to the parent owed support and for the payment data to be sent to the DOR.¹⁷ A private case may become a IV-D case due to either payment of public assistance or because a parent applies for IV-D services.¹⁸

Effect of Bill

The bill amends s. 61.13, F.S., to:

- Specify that payments in IV-D cases must be made to the SDU; and
- Require that, upon notice by the DOR that it is providing IV-D services in a case with an existing support order, the depository establish a case on the CLERC System and set up the appropriate payment accounts so that payments can be disbursed by the SDU, regardless of whether there is a default in payment.

Child Support Guidelines; Retroactive Payments (Section 4)

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:¹⁹

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;
- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.

functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.

¹⁴ Section 61.13(1)(d)3., F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The DOR, *Senate Bill 1532 Agency Analysis*, p. 2, (March 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR Analysis").

¹⁸ *Id.*

¹⁹ Section 61.1354(3), F.S.

In *DOR v. Jackson*,²⁰ the Florida Supreme Court held that parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are not in agreement on whether income can be imputed when determining an initial child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,²¹ the Fourth District Court of Appeal (DCA) reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,²² which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,²³ the First District Court of Appeal affirmed an order declining to impose a child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*,²⁴ the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.²⁵ On September 17, 2020, the U.S. Office of Child Support Enforcement proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or
- Any offense of which the individual's dependent child or the child support recipient was the victim.²⁶

²⁰ 846 So. 2d 486 (Fla. 2003).

²¹ 34 So. 3d 121 (Fla. 4th DCA 2010).

²² 727 So. 2d 328 (Fla. 4th DCA 1999).

²³ 196 So.3d 1267 (Fla. 1st DCA 2016).

²⁴ 220 So. 3d 480 (Fla. 5th DCA 2017).

²⁵ 45 CFR 302.56(c)(3).

²⁶ 85 FR 58029 (September 17, 2020).

Effect of Bill

The bill prohibits treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law. This change will bring the state guidelines into closer compliance with federal regulations, though state guidelines would include exemptions not authorized in current regulations. Should the proposed rule creating limited exceptions for treating incarceration as voluntary unemployment be finalized, the exception in SB 1532 relating to “willful nonpayment of child support” will be in conflict with the new federal rule, which may necessitate a future amendment.

The bill also amends s. 61.30(2) and (10), F.S., to be consistent with Florida case law, specifying:

- Social security benefits received by a minor child due to the retirement or disability of the child’s parent are considered part of the parent’s gross income for determining child support obligations.
- A parent is entitled to credit for social security benefits paid directly to the child or the child’s caregiver when the benefits are paid due to the parent’s retirement or disability.
- The parent’s share of the monthly support obligation is considered paid in full each month for which such benefits are paid that are equal to or greater than the parent’s share of the monthly obligation.
- If the benefits are less than the parent’s share of the monthly obligation, the parent must pay the difference. If the benefits are more than the parent’s share of the monthly obligation, the excess inures to the benefit of the child and may not be credited to arrears or retroactive support that accrued before the benefits commenced.

To obtain credit, a parent subject to a court order for child support, or the DOR in a IV-D case, may file a motion with the court or include the request in a petition to modify the support order, and that, alternatively, in a IV-D case, the DOR may determine and apply credit after notice and opportunity for hearing as provided under chapter 120, F.S. If credit is determined and applied by the DOR, the DOR shall notify the clerk of court and the clerk shall update the payment record.

Consumer Reporting Agencies (Section 2)

As the state’s IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual’s income, establish that individual’s capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:

- The consumer report is needed for the purpose of determining an individual’s income and establishing an individual’s capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;

- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.²⁷

Effect of Bill

The bill amends s. 63.1354, F.S., requiring consumer reporting agencies to provide requested consumer reports to the DOR, rather than the head of the IV-D agency or its designee. The bill also requires that, when requesting a consumer report, certified statements required to be made under s. 61.1354, F.S., to conform to the federal Fair Credit Reporting Act (FCRA)²⁸ and that the DOR, rather than the head of the IV-D agency, or its designee, make the certification.

Although the FCRA was amended in 2015 to remove the requirement to provide notice to individuals, the bill maintains the current notice requirement; however, the bill authorizes such notice to be made by regular mail instead of by certified or registered mail.

Parent Education and Family Stabilization (Section 3)

When the parents of minor children are in the process of a divorce or separation they are required by statute to take a course on parent education and family stabilization. The course must be completed prior to the entry of the final judgement of dissolution of marriage.²⁹ The course is a minimum of 4 hours long and designed to educate, train, and assist divorcing parents on the consequences of divorce on parents and children. The course may include topics such as:

- Legal aspects of deciding child-related issues between parents;
- Emotional aspects of separation and divorce on adults;
- Emotional aspects of separation and divorce on children;
- Family relationships and family dynamics;
- Financial responsibilities to a child or children; and
- Issues regarding spousal or child abuse and neglect.
- Skill-based relationship education that may be generalized to parenting, workplace, school, neighborhood, and civic relationships.³⁰

The Department of Children and Families approves a list of providers to teach this course, which is called the Parent Education and Family Stabilization Course.³¹

Effect of Bill

The bill provides the following legislative finding: "It is...beneficial to divorcing or separating parents of children who have identified special needs or emotional concerns to have available an

²⁷ Section 61.1354(3), F.S.

²⁸ 15 U.S.C. s. 1681b(a)(4). FCRA protects information held by credit reporting agencies, and places legal obligations on companies who report information to them. The Federal Trade Commission, *Fair Credit Reporting Act*, available at <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Mar. 8, 2021).

²⁹ Section 61.21(4), F.S.

³⁰ Section 61.21(2)(a), F.S.

³¹ Section 61.21(2), F.S. The approved providers can be found at <https://www.myflfamilies.com/service-programs/child-welfare/stabilization/>

educational program that will provide information tailored to children who have special needs or emotional concerns.”

The bill adds to the list of topics that may be taught under the Parent Education and Family Stabilization Course to include the “particularized needs of children who have identified special needs or emotional concerns.” Neither current law nor the bill require the course to include this subject in particular, as the list only contains topics that *may* be included. The course, in general, is only required to “educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.”³² The bill does require, however, the parents of children with special needs or emotional concerns to select a course that is tailored education relating to children who have special needs or emotional concerns.

The bill gives a court discretion to require a parent to attend a course separate from the Parent Education and Family Stabilization Course. Specifically, a court may require a parent to attend an additional courses relating to children who have special needs or emotional concerns.

Rendering Final Orders (Section 5)

Final orders determining paternity or paternity and child support rendered as authorized by s. 409.256(11), F.S., and administrative support orders rendered as authorized by s. 409.2563(7), F.S., are prepared, reviewed and approved using the Child Support Program’s automated system.³³ Once approved, the rendered final orders are digitally stored as PDF documents after electronic signatures are affixed and copies are automatically mailed to the parties with the by the automated system.³⁴ Under current law, rendered means that a signed written order is filed with the clerk or any deputy clerk of the DOR and served on the respondent.³⁵ The date of filing must also be indicated on the face of the order at the time of rendition.³⁶ Final orders issued by the Child Support Program under ss. 409.256 and 409.2563, F.S., must state that “The Final Order has been rendered on the above date by filing it with the agency clerk of the Florida Department of Revenue and serving it on the respondent.”³⁷

As it relates to administrative support orders, s. 409.2563(8), F.S., also requires the DOR to file a certified copy of such orders with the clerk of the circuit court. Currently, the DOR’s automated system generates final administrative support orders, which are batch e-filed electronically through the Florida Courts E-Filing Portal or automatically sent via US mail to the clerk.³⁸

Effect of Bill

The bill amends ss. 409.256(1)(i) and 409.2563(1)(e), F.S., modifying the definition of “rendered” to reflect that final orders and administrative support orders are system-generated with electronic signatures, rather than filed with the agency clerk or a deputy clerk.

³² Section 61.21(2), F.S.

³³ The DOR, *Senate Bill 1532 Analysis*, p. 5.(March 12, 2021)

³⁴ *Id.*

³⁵ Sections 409.256(1)(i) and 409.2563(1)(e), F.S.

³⁶ *Id.*

³⁷ The DOR, *Senate Bill 1532 Analysis*, p. 5.(March 12, 2021)

³⁸ *Id.*

The bill also removes the requirement to file a certified copy of an administrative support order with the clerk of the circuit court, as the orders are filed electronically or automatically sent via US mail to the clerk.

Garnishment/FAST Levy (Section 7)

The DOR is authorized to collect unpaid child support obligations by garnishing accounts at banks, credit unions and other financial institutions.³⁹ Upon service of the initial garnishment notice (Notice to Freeze) by registered mail, a person in possession of personal property owned by or owed to a person who owes past due support may not transfer or otherwise dispose of the obligor's property until 60 days after receipt of the notice.⁴⁰ After the Notice to Freeze is served on the one in possession of the property, the obligor is served with a Notice of Intent to Levy by certified or registered mail and given an opportunity to contest the notice.⁴¹ If a timely petition to contest is not filed, or there is a hearing and an order entered that garnishment may proceed, the DOR is authorized to serve a Notice of Levy by registered mail on the one in possession of the property to be levied upon.⁴²

The federal OCSE sponsors the Federally Assisted State Transmitted (FAST) Levy program. The FAST Levy program, which is voluntary for both child support and financial institutions, allows the agency and institutions to communicate more easily in respect of levy actions and in a standardized, automated manner.⁴³ The FAST Levy program also reduces costs, increases efficiency to collect past due child support, and gets support to families faster.⁴⁴ To participate, the DOR must provide notice by secure electronic means to the participating financial institutions. However, since the statute requires service of the Notice of Levy by registered mail, the DOR and Florida financial institutions are currently unable to participate in the FAST Levy program.

Effect of Bill

The bill amends s. 409.25656(4), F.S., authorizing the DOR to deliver levy notices electronically to banks, credit unions, and other financial institutions that provide express consent to receive notice in that manner. For financial institutions that elect to participate in the FAST Levy program, the DOR would notify participating financial institutions of pending levy actions by periodically transmitting an electronic data file to the OCSE.⁴⁵ The financial institution would access the data on the secure website maintained by the federal office and process the data to determine which customer accounts would be levied on and for what amounts.⁴⁶ The financial institution would provide this data to the central site which would generate a response file to the DOR that would be used to automatically update the Child Support Program's automated

³⁹ Section 409.25656, F.S.

⁴⁰ Section 409.25656(1), F.S.

⁴¹ See s. 409.25656(7) and (8), F.S.

⁴² Section 409.25656(3), F.S. The Notice of Levy requires a financial institution to transfer the funds in the account to the DOR up to the amount of past due or overdue support. The DOR then disburses the funds to the parent who is owed support.

⁴³ Office of Child Support Enforcement: *An Office of the Administration for Children & Families, FAST Levy Overview*, available at <https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview> (last visited Mar. 8, 2021).

⁴⁴ *Id.*

⁴⁵ The DOR, *Senate Bill 1532 Analysis*, p. 6 (March 12, 2021).

⁴⁶ *Id.*

system.⁴⁷ Financial institutions that do not elect to participate in the program would continue to receive hard copy levy notices from the DOR by registered mail pursuant to current law.

Unclaimed Property (Section 8)

Florida's Department of Financial Services (DFS) regulates the disposition of unclaimed property in this state.⁴⁸ In addition to money and securities, unclaimed property includes tangible property such as watches, jewelry, coins, currency, stamps, historical items and other miscellaneous articles from abandoned safe deposit boxes. Until claimed, unclaimed money is deposited into the state school fund, where it is used for public education. Florida's Chief Financial Officer holds unclaimed property claimable accounts valued at \$2 billion, mostly from dormant accounts in financial institutions, insurance and utility companies, securities and trust holdings. There is, however, no statute of limitations, and citizens have the right to claim their property any time at no cost.⁴⁹

As part of an effort to collect and pay past due support, s. 409.25658, F.S., requires the DOR and the DFS to identify past due obligors' unclaimed property held by the DFS.⁵⁰ The DOR is required to periodically provide the DFS with an electronic file of support obligors who owe past due support.⁵¹ The DFS is then required to conduct a data match of the file against all apparent owners of unclaimed property under ch. 717, F.S., and provide the resulting match list to the DOR.⁵² Upon receipt of the data match list, the DOR is required to provide the DFS the obligor's last known address and DFS is required to follow the notification procedures under s. 717.118, F.S., ensuring owners of unclaimed property are notified in a cost-effective manner.⁵³

Prior to paying the approved claim for unclaimed property of an obligor owing past due support, the DFS must notify the DOR that the claim has been approved.⁵⁴ Upon such notice by the DFS to the DOR, the DOR must immediately send a notice by certified mail to the obligor, with a copy to the DFS, advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support owed, and informing the obligor of the obligor's right to request a hearing under ch. 120, F.S.⁵⁵ The DFS must retain custody of the property until a final order is entered by the DOR and any appeals have been concluded.⁵⁶ If the obligor does not request a hearing, the DOR enters a final order instructing the DFS to transfer the property to the DOR in the amount stated in the final order.⁵⁷

⁴⁷ *Id.*

⁴⁸ Section 717.101, F.S.

⁴⁹ The DFS, *Unclaimed Property*, available at <https://myfloridacfo.com/division/unclaimedproperty/home> (last visited Mar. 8, 2021).

⁵⁰ Section 409.25658(1), F.S.

⁵¹ Section 409.25658(2), F.S.

⁵² *Id.*

⁵³ Section 409.25658(3), F.S.

⁵⁴ Section 409.25658(4), F.S.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Section 409.25658(4), F.S.

The following chart reflects recent data from the DOR on the number of actions, collections, and final orders related to unclaimed property:⁵⁸

State Fiscal Year	Actions Initiated	Final Orders Entered	Collections Received
2020/21 (YTD)	5,261	4,617	\$721,040
2019/20	6,943	4,904	\$1,165,414
2018/19	6,726	5,285	\$1,021,727
2017/18	8,316	5,035	\$1,388,238

Effect of Bill

The bill switches the current roles of the DOR and the DFS as they relate to unclaimed property. The DFS must periodically provide the DOR with an electronic data file of unclaimed property accounts. The DOR must then use this data to identify support obligors with unclaimed property accounts and send the DFS an electronic data file with the names and other personal identifying information of the support obligors.⁵⁹ The bill authorizes the DOR to submit claims for unclaimed property to the DFS.

The bill requires the DOR to send a notice of intent to intercept unclaimed property by regular mail, instead of certified mail. If a support obligor does not request a hearing, the DOR notifies the DFS to transfer property to the DOR in the amount of the past due support instead of entering a final order.

Customer Service via E-mail (Section 9)

Under the Department of Management Services, Division of State Technology, R. 60GG-2.003(4)(b)1., F.A.C., each state agency is required to “[e]ncrypt confidential and exempt information during transmission, except when the transport medium is owned or managed by the agency and controls are in place to protect the data during transit.” Due to the COVID-19 pandemic, the DOR is operating under a waiver of this rule, providing consumer services by e-mail, phone, fax, online chat, and online self-help.⁶⁰ Since March 2020, e-mails from customers have increased tenfold.⁶¹ Using encrypted e-mail to respond to customers’ e-mails is cumbersome and disfavored by customers.⁶²

Effect of Bill

The bill amends s. 409.2567, F.S., authorizing the DOR to include confidential and exempt information in unencrypted e-mail communications with a parent, caregiver, or other person who is authorized to receive the information, provided the parent, caregiver, or other person consents, except that social security numbers, federal tax information, driver license numbers and bank account numbers may not be provided in this manner.

⁵⁸ E-mail from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: DOR Child Support Concepts Information, March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵⁹ This reflects the 2015 Memorandum of Understanding currently in effect between the DOR and the DFS. *See* The DOR Analysis at p. 7.

⁶⁰ The DOR, *Senate Bill 1532 Analysis*, p. 7 (March 12, 2021).

⁶¹ *Id.*

⁶² *Id.*

Compensation Reporting (Section 10)

Under state and federal law, employers are required to report newly hired or rehired employees to the State Directory of New Hires⁶³ within 20 days after the date of hire.⁶⁴ Employers must report the employee's name, address, social security number, date of birth (if available) date of hire (the date the employee first performs services for pay), employer's name and address, and the employer's federal employer identification number.⁶⁵ Employers may report new hires online by submitting electronic data files or by fax, phone or by first class mail.

The Child Support Program adds the new hire data to the State Directory of New Hires database daily and performs automated data matching using the names and social security numbers provided to identify employers of individuals who owe child support.⁶⁶ Within two business days after the information is reported and added to the data base, the Child Support Program must, when appropriate, issue an income deduction notice to the employer.⁶⁷ The information is also made available to other agencies responsible for determining eligibility for various benefit programs under s. 409.2576(9), F.S.

Some individuals rendering services for payment may not be classified as employees but might instead be considered independent contractors. However, income paid to individuals not classified as employees is not reported to the State Directory of New Hires, limiting the ability of the Child Support Program to collect child support by income deduction. Income earned by independent contractors who are paid or will be paid \$600 or more during a calendar year by a service-recipient engaged in a business must be reported to the Internal Revenue Service.⁶⁸ Mandatory reporting of these individuals in the same manner as employees could result in increased child support collections for families. Several states have laws requiring employers to report new-hire information on independent contractors, including California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, Ohio, Texas, Utah and West Virginia.⁶⁹

Effect of Bill

The bill amends s. 409.2576, F.S., adding the definition of "service recipient," a person engaged in a trade or business for whom a service is performed by an individual in a capacity other than that of an employee. The bill requires a service recipient to report to the State Directory of New Hires any individual, other than an employee, to whom the service recipient pays more than \$600 in a calendar year for services performed by the individual in the course of the service recipient's trade or business.

⁶³ The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state.

⁶⁴ See s. 409.2576, F.S. and 42 USC s. 653a.

⁶⁵ Section 409.2576(3)(a), F.S. See also, OCSE, New Hire Reporting-Answers to Employer Questions, available at <https://www.acf.hhs.gov/css/faq/new-hire-reporting-answers-employer-questions> (last visited Mar. 8, 2021).

⁶⁶ The DOR, *Senate Bill 1532 Analysis*, p. 7. (March 12, 2021).

⁶⁷ Section 409.2576(7), F.S.

⁶⁸ 26 U.S.C. s. 6041A

⁶⁹ The DOR, *Senate Bill 1532 Analysis*, p. 8. (March 12, 2021).

The bill also specifies that, for an individual who is not an employee, the service recipient's report must include the individual's name, address, and social security number, or other identifying number assigned under s. 6109 of the Internal Revenue Code, the date services for payment were first performed by the individual, and the name, address, and employer identification number of the service recipient. The bill provides that service recipients must report these individuals within 20 days after the earlier of either:

- First making payments that require an IRS Form 1099; or
- Entering into a contract providing for such payments.

The bill specifies that the information would be provided to the National Directory of New Hires for use by other state child support programs, the same as new hire reports for employees under current law.

The effective date of the bill is October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will need to start reporting independent contractors' information to the State Directory of New Hires and the new reporting requirement may require more resources and additional costs to private businesses.

Incarcerated parents will benefit from not having their incarceration treated as voluntary unemployment, as income will not be imputed to them while they have no ability to pay, reducing the amount in past-due child support they would otherwise owe.

Financial institutions that participate in the FAST Levy program may experience cost savings with the improved efficiencies associated with participating in the program such as processing levy notices from multiple states in a standardized, automated manner.

Providers of parenting courses that address children having special needs or emotional concerns may experience greater demands for their courses and greater revenues.

C. Government Sector Impact:

The Revenue Estimating Conference has not yet determined the fiscal impact of CS/CS/SB 1532.

With respect to a fiscal impact on state government, the DOR reports an operational impact only.⁷⁰ The Florida Court Clerks & Comptrollers (FCCC) report the bill would most likely result in minimal impact to the Clerks' operations and to those of FCCC in its operation and maintenance of the CLERC system.⁷¹

VI. Technical Deficiencies:

The short title of the bill, an act relating to child support, is narrower than its subject matter, which relates to child support and parenting courses. The Legislature may wish to revise the short title to be "an act relating to family law."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.13, 61.1354, 61.30, 409.256, 409.2563, 409.25656, 409.25658, 409.2567, and 409.2576 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.)

CS/CS by Judiciary on March 22, 2021:

The committee substitute amends the list of topics taught in the Parent Education and Family Stabilization Course to include the particularized needs of children who have identified special needs or emotional concerns.

⁷⁰ The DOR, *Senate Bill 1532 Analysis*, p. 9 (March 12, 2021)

⁷¹ The FCCC, *Senate Bill 1532 Analysis*, p. 4 (March 12, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Requires parents of children with special needs or emotional concerns to take a Parent Education and Family Stabilization course tailored towards those needs prior to any dissolution of marriage.
- Allows for a court to require a parent to take a course relating to children who have special needs or emotional concerns. This course would be separate from the required Parent Education and Family Stabilization Course.

CS by Children, Families, and Elder Affairs on March 9, 2021:

The committee substitute:

- Amends the provision which permits the DOR to deliver notices required under the garnishment section to the obligor by secured electronic means upon express written consent to a person who is in possession of personal property belonging to the obligor;
- Authorizes the DOR to transmit certain confidential and exempt electronic mail regarding support services made on behalf of dependent children in an “unencrypted” format; and
- Makes technical changes to the notice that may be given by the DOR to receive depository services even if the obligor is not delinquent in payment of child support.

B. Amendments:

None.

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

586-02621-21

20211532c1

A bill to be entitled
An act relating to child support; amending s. 61.13,
F.S.; revising requirements for child support
depositories in Title IV-D cases; requiring the
depositories to transmit case data through and set up
appropriate payment accounts in the Clerk of the Court
Child Support Enforcement Collection System upon
certain notice from the Department of Revenue;
amending s. 61.1354, F.S.; revising provisions related
to the sharing of information between consumer
reporting agencies and the department; requiring
consumer reports to be kept confidential and used only
for specified purposes; amending s. 61.30, F.S.;
prohibiting the treatment of incarceration as
voluntary unemployment for purposes of establishing or
modifying child support orders, with exceptions;
providing that certain social security benefits are
included in a parent's gross income; authorizing
certain social security benefits paid to be applied as
a credit for purposes of monthly support obligations;
providing requirements for such credit; providing
procedures for a parent to seek application of such
credit; amending s. 409.256, F.S.; revising the
definition of the term "rendered"; amending s.
409.2563, F.S.; revising the definition of the term
"rendered"; deleting a requirement that a certain
order filed by the department be a certified copy of
the order; amending s. 409.25656, F.S.; authorizing
the department to deliver certain notices by secure

586-02621-21

20211532c1

electronic means under certain circumstances; amending s. 409.25658, F.S.; revising provisions related to the department's joint efforts with the Department of Financial Services to use unclaimed property for past due child support; amending s. 409.2567, F.S.; authorizing the department to include confidential and exempt information in unencrypted electronic mail communications with parents, caregivers, or other authorized persons under certain circumstances, with exceptions; amending s. 409.2576, F.S.; requiring service recipients to report certain information to the State Directory of New Hires; defining the term "service recipient"; providing reporting requirements for service recipients; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(1)

(d)1. All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order.

2. If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. Support orders that are

586-02621-21

20211532c1

not subject to immediate income deduction may be directed through the depository under s. 61.181 or made payable directly to the obligee. Payments made by immediate income deduction shall be made to the State Disbursement Unit. The court shall provide a copy of the order to the depository.

3. For support orders payable directly to the obligee, any party, ~~or the department in a IV-D case,~~ may subsequently file an affidavit with the depository alleging a default in payment of child support and stating that the party wishes to require that payments be made through the depository. The party shall provide copies of the affidavit to the court and to each other party. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be paid through the depository, except that payments in Title IV-D cases and income deduction payments shall be made to the State Disbursement Unit. In Title IV-D cases, an affidavit of default or a default in payments is not required to receive depository services. Upon notice by the department that it is providing Title IV-D services in a case with an existing support order, the depository shall transmit case data through, and set up appropriate payment accounts in, regardless of whether there is a delinquency, the Clerk of the Court Child Support Enforcement Collection System as required under s. 61.181(2)(b).

Section 2. Subsection (3) of section 61.1354, Florida Statutes, is amended to read:

61.1354 Sharing of information between consumer reporting agencies and the IV-D agency.—

(3) A consumer reporting agency ~~For purposes of determining an individual's income and establishing an individual's capacity~~

586-02621-21

20211532c1

88 ~~to make support payments or for determining the appropriate~~
89 ~~amount of child support payment to be made by the individual,~~
90 ~~consumer reporting agencies shall provide, upon request,~~
91 ~~consumer reports to the department head of the IV-D agency~~
92 ~~pursuant to s. 604 of the Fair Credit Reporting Act, provided~~
93 ~~that the department head of the IV-D agency, or its designee,~~
94 ~~certifies that:~~

95 (a) The consumer report is needed for the purpose of
96 ~~determining an individual's income and establishing an~~
97 ~~individual's capacity to make support payments, ~~or~~ determining~~
98 ~~the appropriate level of support payments, or enforcing a child~~
99 ~~support order, award, agreement, or judgment amount of child~~
100 ~~support payment to be made by the individual;~~

101 (b) The consumer's parentage of the child to whom the
102 obligation relates has been established or acknowledged by the
103 consumer in accordance with state laws under which the
104 obligation arises ~~Paternity of the child of the individual whose~~
105 ~~report is sought, if that individual is the father of the child,~~
106 ~~has been established or acknowledged pursuant to the laws of~~
107 ~~Florida;~~

108 (c) The individual whose report is sought was provided with
109 at least 15 days' prior notice, by regular ~~certified or~~
110 ~~registered~~ mail to the individual's last known address, that the
111 report was requested; and

112 (d) The consumer report will be kept confidential, will be
113 used solely for the purpose described in paragraph (a), and will
114 not be used in connection with any other civil, administrative,
115 or criminal proceeding or for any other purpose.

116 Section 3. Present paragraph (c) of subsection (2) of

586-02621-21

20211532c1

section 61.30, Florida Statutes, is redesignated as paragraph (e), new paragraphs (c) and (d) are added to that subsection, and subsection (10) of that section is amended, to read:

61.30 Child support guidelines; retroactive child support.—

(2) Income shall be determined on a monthly basis for each parent as follows:

(c) Except for incarceration for willful nonpayment of child support or for an offense against a child or person who is owed child support, incarceration may not be treated as voluntary unemployment in establishing or modifying a support order. However, the court may deviate from the child support guideline amount as provided in paragraph (1) (a).

(d) Social security benefits received by a minor child due to the retirement or disability of the child's parent shall be included in the parent's gross income.

(10) (a) Each parent's actual dollar share of the total minimum child support need shall be determined by multiplying the minimum child support need by each parent's percentage share of the combined monthly net income.

(b)1. A parent is entitled to credit for social security benefits paid directly to the child or the child's caregiver when the benefits are paid due to the parent's retirement or disability. The parent's share of the monthly support obligation is paid in full each month for which such benefits are paid that are equal to or greater than the parent's share of the monthly obligation. If the benefits are less than the parent's share of the monthly obligation, the parent owes the difference. If the benefits are more than the parent's share of the monthly obligation, the excess inures to the benefit of the child and

586-02621-21

20211532c1

may not be credited to arrears or retroactive support that
accrued before the benefits commenced.

2. To obtain credit for social security benefits paid, a
parent subject to a court order for child support, or the
department in a Title IV-D case, may file a motion with the
court or include the request in a petition to modify the support
order. Alternatively, in a Title IV-D case, the department may
determine and apply credit after notice and an opportunity for a
hearing are provided in accordance with chapter 120. If the
department determines that a credit applies, the department
shall notify the clerk of court, and the clerk shall update the
payment record to reflect the credit.

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

409.256 Administrative proceeding to establish paternity or
paternity and child support; order to appear for genetic
testing.—

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

(i) "Rendered" means that a signed written order is issued
~~by filed with the clerk or a deputy clerk of the Department of~~
Revenue and served on the respondent. ~~The date of filing must be~~
~~indicated on the face of the order at the time of rendition.~~

Section 5. Paragraph (e) of subsection (1) and subsection
(8) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support
obligations.—

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

(e) "Rendered" means that a signed written order is issued
~~by filed with the clerk or any deputy clerk of the department~~

586-02621-21

20211532c1

and served on the respondent. ~~The date of filing must be indicated on the face of the order at the time of rendition.~~

Other terms used in this section have the meanings ascribed in ss. 61.046 and 409.2554.

(8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department shall file with the clerk of the circuit court a ~~certified~~ copy of an administrative support order rendered under this section. The depository operated pursuant to s. 61.181 for the county where the administrative support order has been filed shall:

(a) Act as the official recordkeeper for payments required under the administrative support order;

(b) Establish and maintain the necessary payment accounts;

(c) Upon a delinquency, initiate the judgment by operation of law procedure as provided by s. 61.14(6); and

(d) Perform all other duties required of a depository with respect to a support order entered by a court of this state.

When a proceeding to establish an administrative support order is commenced under subsection (4), the department shall file a copy of the initial notice with the depository. The depository shall assign an account number and provide the account number to the department within 4 business days after the initial notice is filed.

Section 6. Subsection (4) of section 409.25656, Florida Statutes, is amended to read:

409.25656 Garnishment.—

(4) A notice that is delivered under this section is

586-02621-21

20211532c1

effective at the time of delivery against all credits, other personal property, or debts of the obligor which are not at the time of such notice subject to an attachment, garnishment, or execution issued through a judicial process. Upon express written consent of a person who is or may be in possession of personal property belonging to the obligor, the department may deliver the notices required by this section to that person by secure electronic means.

Section 7. Section 409.25658, Florida Statutes, is amended to read:

409.25658 Use of unclaimed property for past due support.—

(1) In a joint effort to facilitate the collection and payment of past due support, the Department of Revenue, in cooperation with the Department of Financial Services, shall identify persons owing support collected by the department ~~through a court~~ who are presumed to have unclaimed property held by the Department of Financial Services.

(2) The Department of Financial Services ~~department~~ shall periodically provide the ~~department of Financial Services~~ with an electronic file of unclaimed property accounts. The department shall use the data to identify obligors with unclaimed property accounts and shall provide the Department of Financial Services with an electronic data file that includes the names and other personal identifying information of the obligors ~~support obligors who owe past due support. The Department of Financial Services shall conduct a data match of the file against all apparent owners of unclaimed property under chapter 717 and provide the resulting match list to the~~ department.

586-02621-21

20211532c1

233 (3) As the state's Title IV-D agency under s. 409.2557(1),
234 the department is authorized to submit claims for unclaimed
235 property to the Department of Financial Services for the purpose
236 of collecting past due support and shall do so in accordance
237 with the standards established by the Department of Financial
238 Services ~~Upon receipt of the data match list, the department~~
239 ~~shall provide to the Department of Financial Services the~~
240 ~~obligor's last known address. The Department of Financial~~
241 ~~Services shall follow the notification procedures under s.~~
242 ~~717.118.~~

243 (4) ~~Before~~ Prior to paying an obligor's approved claim, the
244 Department of Financial Services shall notify the department
245 that such claim has been approved. Upon confirmation that the
246 Department of Financial Services has approved the claim or a
247 claim submitted by the department, the department shall
248 ~~immediately~~ send a notice by regular ~~certified~~ mail to the
249 obligor, ~~with a copy to the Department of Financial Services,~~
250 advising the obligor of the department's intent to intercept the
251 property ~~approved claim~~ up to the amount of the past due
252 support, and informing the obligor of the obligor's right to
253 request a hearing under chapter 120. If there is a hearing, the
254 Department of Financial Services shall retain custody of the
255 property until a final order has been entered and any appeals
256 thereon have been concluded. If the obligor fails to request a
257 hearing, the department shall inform ~~enter a final order~~
258 ~~instructing~~ the Department of Financial Services to transfer to
259 the department the property up to the amount of past due support
260 owed ~~in the amount stated in the final order~~. Upon such
261 transfer, the Department of Financial Services shall be released

586-02621-21

20211532c1

from further liability related to the transferred property.

(5) ~~The provisions of~~ This section provides ~~provide~~ a supplemental remedy, and the department may use this remedy in conjunction with any other method of collecting support.

Section 8. Subsection (1) of section 409.2567, Florida Statutes, is amended to read:

409.2567 Services to individuals not otherwise eligible.—

(1) (a) All support services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department. The federally required application fee for individuals who do not receive public assistance is \$1, which shall be waived for all applicants and paid by the department. The annual fee required under 42 U.S.C. s. 654(6)(B), as amended by Pub. L. No. 115-123, for cases involving an individual who has never received temporary cash assistance and for whom the department has collected the federally required minimum amount of support shall be paid by the department.

(b) The department may include confidential and exempt information in unencrypted electronic mail communications with a parent, a caregiver, or any other person who is authorized to receive the information, provided the parent, caregiver, or other person consents to such communications, except that social security numbers, federal tax information, driver license numbers, and bank account numbers may not be provided in this manner.

Section 9. Section 409.2576, Florida Statutes, is amended to read:

586-02621-21

20211532c1

409.2576 State Directory of New Hires.—

(1) DIRECTORY CREATED.—The State Directory of New Hires is hereby created and shall be administered by the Department of Revenue or its agent. All employers and service recipients in this ~~the~~ state shall furnish a report consistent with subsection (3) for each newly hired or rehired employee or individual who is not an employee but is provided payment for services rendered, unless the employee or individual is employed by or under contract with a federal or state agency performing intelligence or counterintelligence functions and the head of such agency has determined that reporting pursuant to this section could endanger the safety of the employee or individual or compromise an ongoing investigation or intelligence mission.

(2) DEFINITIONS.—For purposes of this section:

(a) "Employee" is defined as an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986.

(b) "Employer" has the meaning given such term in s. 3401(d) of the Internal Revenue Code of 1986 and includes any government entity and labor organization.

(c) "Labor organization" has the meaning given such term in s. 2(5) of the National Labor Relations Act and includes any entity which is used by the organization and an employer to carry out requirements described in s. 8(f)(3) of such act of an agreement between the organization and employer.

(d) "Date of hire" is the first day of work for which the employee is owed income.

(e) "Service recipient" means a person engaged in a trade or business who pays an individual for services rendered in the

586-02621-21

20211532c1

320 course of such trade or business.

321 (3) EMPLOYERS AND SERVICE RECIPIENTS TO FURNISH REPORTS.—

322 (a) ~~Each employer subject to the reporting requirements of~~
323 ~~chapter 443 with 250 or more employees, shall provide to the~~
324 ~~State Directory of New Hires, a report listing the employer's~~
325 ~~legal name, address, and reemployment assistance identification~~
326 ~~number. The report must also provide the name and social~~
327 ~~security number of each new employee or rehired employee at the~~
328 ~~end of the first pay period following employment or~~
329 ~~reemployment.~~

330 ~~(b)~~ All employers shall furnish a report to the State
331 Directory of New Hires of the state in which the newly hired or
332 rehired employee works. The report required in this section
333 shall be made on a W-4 form or, at the option of the employer,
334 an equivalent form, and can be transmitted magnetically,
335 electronically, by first-class mail, or other methods which may
336 be prescribed by the State Directory. Each report shall include
337 the name, address, date of hire, and social security number of
338 every new and rehired employee and the name, address, and
339 federal employer identification number of the reporting
340 employer. If available, the employer may also include the
341 employee's date of birth in the report. Multistate employers
342 that report new hire information electronically or magnetically
343 may designate a single state to which it will transmit the above
344 noted report, provided the employer has employees in that state
345 and the employer notifies the Secretary of Health and Human
346 Services in writing to which state the information will be
347 provided. Agencies of the United States Government shall report
348 directly to the National Directory of New Hires.

586-02621-21

20211532c1

349 (b) A service recipient shall report to the State Directory
350 of New Hires an individual who is not an employee in the same
351 manner as described in paragraph (a) but who the service
352 recipient, while engaged in a trade or business, pays in an
353 amount of \$600 or more per calendar year for services rendered
354 in the course of the trade or business. The report must include
355 the name, address, and social security number or other
356 identifying number assigned to the individual under section 6109
357 of the Internal Revenue Code of 1986; the date services for
358 payment were first rendered by the individual; and the name,
359 address, and employer identification number of the service
360 recipient.

361 (c) Pursuant to the federal Personal Responsibility and
362 Work Opportunity Reconciliation Act of 1996, each party is
363 required to provide his or her social security number in
364 accordance with this section. Disclosure of social security
365 numbers obtained through this requirement shall be limited to
366 the purpose of administration of the Title IV-D program for
367 child support enforcement and those programs listed in
368 subsection (9).

369 (4) TIME FOR REPORTS.—

370 (a) Employers must report new hire information, as
371 described in subsection (3), within 20 days of the hire date of
372 the employee, or, in the case of employers that report new hire
373 information electronically or by magnetic tape, by two monthly
374 transmissions, if necessary, not less than 12 days nor more than
375 16 days apart.

376 (b) Service recipients must report on individuals subject
377 to reporting under paragraph (3)(b) within 20 days after the

586-02621-21

20211532c1

earlier of:

1. The date of the first payment made which requires an information return in accordance with section 6041A(a) of the Internal Revenue Code of 1986; or

2. The date on which a contract providing for such payments is entered into.

If service recipients report individuals under this paragraph electronically or by magnetic tape, the reports may be made by two monthly transmissions, if necessary, but may not be less than 12 days or more than 16 days apart.

(5) ENTRY OF DATA.—The State Directory of New Hires shall enter ~~new hire~~ information reported under this section into an automated database within 5 business days of receipt.

(6) MATCHES TO STATE REGISTRY. ~~Not later than May 1, 1998,~~
The Department of Revenue or its agent must conduct automated matches of the social security numbers of employees reported to the State Directory of New Hires against the social security numbers of records in the State Case Registry. The Title IV-D agency shall use the new hire information received to locate individuals for the purposes of establishing paternity and establishing, modifying, and enforcing support obligations. Private entities under contract with the Title IV-D agency to provide Title IV-D services may have access to information obtained from the State Directory of New Hires and must comply with privacy safeguards.

(7) WAGE WITHHOLDING NOTICE AND NATIONAL MEDICAL SUPPORT NOTICE.—The department shall transmit a wage withholding notice consistent with s. 61.1301 and, when appropriate, a national

586-02621-21

20211532c1

407 medical support notice, as defined in s. 61.046, ~~to the~~
408 ~~employee's employer~~ within 2 business days after entry of the
409 new hire information into the State Directory of New Hires'
410 database, unless the court has determined that the obligor's
411 ~~employee's~~ wages or other income is ~~are~~ not subject to
412 withholding or, for purposes of the national medical support
413 notice, the support order does not contain a provision ~~for the~~
414 ~~employee~~ to provide health insurance. The withholding notice
415 shall direct the employer or other payor of income to withhold
416 income in accordance with the income deduction order, and the
417 national medical support notice shall direct the employer to
418 withhold premiums for health insurance.

419 (8) PROVIDING INFORMATION TO NATIONAL DIRECTORY.—The State
420 Directory of New Hires must furnish information regarding newly
421 hired or rehired employees and other individuals subject to
422 reporting to the National Directory of New Hires for matching
423 with the records of other state case registries within 3
424 business days of entering such information ~~from the employer~~
425 into the State Directory of New Hires. The State Directory of
426 New Hires shall enter into an agreement with the Department of
427 Economic Opportunity or its tax collection service provider for
428 the quarterly reporting to the National Directory of New Hires
429 information on wages and reemployment assistance taken from the
430 quarterly report to the Secretary of Labor, now required by
431 Title III of the Social Security Act, except that no report
432 shall be filed with respect to an employee of a state or local
433 agency performing intelligence or counterintelligence functions,
434 if the head of such agency has determined that filing such a
435 report could endanger the safety of the employee or compromise

586-02621-21

20211532c1

an ongoing investigation or intelligence mission.

(9) DISCLOSURE OF INFORMATION.—

(a) ~~New-hire~~ Information reported under this section shall be disclosed to the state agency administering the following programs for the purposes of determining eligibility under those programs:

1. Any state program funded under part A of Title IV of the Social Security Act;

2. The Medicaid program under Title XIX of the Social Security Act;

3. The reemployment assistance or unemployment compensation program under s. 3304 of the Internal Revenue Code of 1954;

4. The food assistance program under the Food and Nutrition Act of 2008; and

5. Any state program under a plan approved under Title I (Old-Age Assistance for the Aged), Title X (Aid to the Blind), Title XIV (Aid to the Permanently and Totally Disabled), or Title XVI (Aid to the Aged, Blind, or Disabled; Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(b) ~~New-hire~~ Information reported under this section shall be disclosed to the state agencies operating employment security and workers' compensation programs for the purposes of administering such programs.

Section 10. This act shall take effect October 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 10, 2021

I respectfully request that **Senate Bill 1532**, relating to Child Support, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Florida Senate, District 32

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1876

INTRODUCER: Judiciary Committee and Senator Albritton

SUBJECT: Relief from Burdens on Real Property Rights

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1876 amends the Bert J. Harris, Jr., Private Property Rights Protection Act and the Florida Land Use and Environmental Dispute Resolution Act. Both acts provide procedures and remedies to land owners whose property is inordinately burdened by a local government regulation. In the Bert Harris Act, the definitions of an “action of a governmental entity” is revised to include government actions that affect “real property including acting on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.” The term “real property” is amended to mean, in part, land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including other relevant interests.

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

Additionally, the bill revises the Bert Harris Act to:

- Reduce the timeframe under which a claimant must notify the government before filing an action;
- Specify that written settlement offers are presumed to protect the public interest;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Extend the point from which a prevailing claimant may recover attorney fees and costs; and

- Authorize a property owner, under specified conditions, to notify the government that he or she deems a law or regulation's impact on his or her real property to be restrictive of allowable uses and the property owner is not required to formally pursue an application for a development order or permit before bringing a claim.

The bill also allows a property owner to challenge an unlawful government exaction without waiting for a written notice of exaction when a local government is poised to impose an exaction upon his or her property.

The bill takes effect July 1, 2021.

II. Present Situation:

Both the Federal Constitution and State Constitution guarantee that a person's private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall "be taken for public use without just compensation." Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.¹

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

The Legislature enacted the "Bert J. Harris, Jr., Private Property Rights Protection Act" in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- "As-applied" challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not based on temporary impacts.²

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking³ under either the State Constitution or the United States Constitution. The Legislature declared that there is "an important state interest in protecting the interests of private property owners from those inordinate burdens." Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.⁴

¹ FLA. CONST. art. X, s. 6.

² W. Thomas Hawkins, *Land Use Law in Florida*, 17-3 (Routledge, forthcoming June 2021).

³ A "taking" is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner's rights. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ Section 70.001(1), F.S.

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.⁵

Presuit Notice

A property owner who seeks compensation under the Harris Act must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.^{6,7} If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner’s property.⁸

The Government Must Make a Written Settlement Offer

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.⁹

⁵ Section 70.001(3)(e)1., F.S. The definition further explains in s. 70.001(3)(e)2, F.S., what the terms do not include with regard to other impacts.

⁶ Section 70.001(4)(a), F.S.

⁷ The appraisal should contain valuations of the property both before and after the government’s restriction was imposed. This will enable the government to adequately evaluate the property owner’s potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, The Florida Bar, 2018 Florida Real Property Litigation (2018), available through Westlaw, <https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem>.

⁸ Section 70.001(4)(b), F.S.

⁹ Section 70.001(4)(c), F.S.

If the Government Offer is Rejected; Timeframe for Filing a Lawsuit

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.¹⁰ A cause of action may not be filed more than 1 year after a law or regulation is “first applied” by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.¹¹

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner’s property. If the court determines that an inordinate burden was imposed, the court must also determine the percentage of responsibility each governmental entity must bear.¹² The circuit court must impanel a jury to determine the amount of compensation.¹³

Recovery of Reasonable Costs and Attorney Fees

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.¹⁴

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government’s settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.¹⁵

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.¹⁶

Governmental Exactions***Background of Prohibited Exactions***

The United States Supreme Court issued a land-use decision in 2013, *Koontz v. St. Johns River Water Management District*,¹⁷ a case that arose in Florida. Mr. Koontz, the land owner, sought to develop a portion of his property that consisted mainly of wetlands. He offered to mitigate the

¹⁰ Section 70.001(5)(b), F.S.

¹¹ Section 70.001(11), F.S.

¹² Section 70.001(6)(a), F.S.

¹³ Section 70.001(6)(b), F.S.

¹⁴ Section 70.001(6)(c)3., F.S.

¹⁵ Section 70.001(6)(c)1., F.S.

¹⁶ Section 70.001(6)(c)2., F.S.

¹⁷ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

adverse environmental effects of his development proposal by deeding a conservation easement to the St. Johns River Water Management District on nearly three-quarters of his remaining property. The district rejected his proposal and told him that his construction permit would be approved *only if* he agreed to reduce the size of his development and, among other things, deed to the district a conservation easement on the resulting larger remainder of his property *or* he agreed to hire contractors to make improvements on district-owned wetlands located several miles away. Mr. Koontz sued the district under s. 373.617, F.S., which allows a property owner to recover money damages if a government action related to land-use permitting constitutes a taking without just compensation, which is an unreasonable exercise of the state's police power.

The Court held that a government cannot deny a land-use permit based upon a landowner's refusal to agree to the government's demands to either turn over property or pay money to the government *unless* there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use. The Court's decision was based upon a violation of the "unconstitutional condition" doctrine which precludes the government from burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them. In this particular case, the constitutional right burdened was the right to compensation when private property is taken for public use. The Court explained that "Extortionate demands for property in the land-use permitting context" violate the Fifth Amendment Takings Clause "not because they take property but because they impermissibly burden the right not to have property taken without just compensation."¹⁸

The Court held that, even though the district's conditions unconstitutionally burdened the landowner's Fifth Amendment rights, a constitutional taking did not occur. Instead, the Court left it up to the states to determine what remedies would be available to a landowner who was subject to an unconstitutional demand where no actual taking has occurred. The Court wrote:

Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies.¹⁹

2015 Legislative Response

The Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a "prohibited exaction."²⁰ Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner's proposed use of real property that does not have "an essential nexus to a legitimate public purpose and is not roughly proportionate to

¹⁸ *Id.* at 607.

¹⁹ *Id.* at 608-609.

²⁰ Chapter 2015-142, s. 2, Laws of Fla.

the impacts of the proposed use that the governmental entity” is seeking to avoid, minimize, or mitigate.²¹

Presuit Notice and Prohibition against Waivers

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.²²

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.²³

Burden of Proof

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.²⁴

Attorney Fees and Costs

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.²⁵

Florida Land Use and Environmental Dispute Resolution Act

When the Legislature adopted the Bert Harris Act in 1995, it also created the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) in the same chapter. The FLUEDRA is codified in s. 70.51, F.S., and is designed to encourage dispute resolution between real property²⁶ owners and government entities using a special magistrate in an informal hearing.²⁷ The FLUEDRA provides an informal mechanism for a property owner to challenge a governmental action infringing on his or her property without filing a lawsuit.

²¹ Section 70.45(1)(c), F.S.

²² Section 70.45(2), F.S.

²³ Section 70.45(3), F.S.

²⁴ Section 70.45(4), F.S.

²⁵ Section 70.45(5), F.S.

²⁶ “Real property” or “land” means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest. Section 70.51(2)(g), F.S.

²⁷ See s. 70.51, F.S.

The FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.²⁸ Under the FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her real property may, within 30 days after receiving the notice or order, file a request for relief with the government that issued the notice or order.²⁹ The government must forward the request to a special magistrate,³⁰ who must hold a hearing within 45 days after receiving the request for relief.³¹ The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts. The hearing is open to the public and does not require the use of an attorney.³² In this role, the special magistrate acts as a "facilitator or mediator."³³

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.³⁴ Within 14 days after the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.³⁵ If the special magistrate finds that the government action does not unreasonably or unfairly burden the use of the property, the property owner may still file suit or pursue other remedies.³⁶ If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend one or more alternatives that allow for reduced government restraints on the property.³⁷

The government must respond within 45 days after receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.³⁸ If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.³⁹

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.⁴⁰ The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.⁴¹

²⁸ Section 70.51(24), F.S.

²⁹ Section 70.51(3) and (4), F.S.

³⁰ A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. Section 70.51(2)(c) and (4), F.S.

³¹ Section 70.51(15)(a), F.S.

³² See s. 70.51(17)(a), F.S.

³³ *Id.*

³⁴ Section 70.51(17)(b) and (18), F.S.

³⁵ Section 70.51(19), F.S.

³⁶ Section 70.51(19)(a), F.S.

³⁷ Section 70.51(19)(b), F.S.

³⁸ Section 70.51(21), F.S.

³⁹ Section 70.51(22), F.S.

⁴⁰ Section 70.51(25), F.S.

⁴¹ Section 70.51(23), F.S.

III. Effect of Proposed Changes:

The bill makes several changes to the Bert Harris Act, amends the governmental exactions statute, and revises one definition in the Florida Land Use and Environmental Dispute Resolution Act.

Bert Harris Act Changes (Section 1)

The Bert Harris Act is amended to:

- Revise the definition of an “action of a governmental entity” to include specific government actions that affect real property including acting on an application or permit or adopting or enforcing “any ordinance, resolution, regulation, rule, or policy.”
- Revise the term “real property” to mean land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including any other relevant interests in the real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.
- Reduce the pre-suit dispute resolution period for nonagricultural properties to 90 days from 150 days. This is accomplished by eliminating the distinction between agricultural properties and other properties. (s. 70.001(4), F.S.)
- Specify that settlement offers are presumed to protect the public interest. This change appears to reverse a 2016 Fifth District Court of Appeal decision, *Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC*,⁴² in which the court held that a trial court was required to make findings regarding whether a settlement protected public interest and property before approving a settlement between a property owner and government entities.
- Allow a property owner the choice of having the court, rather than a jury, determine damages.
- Allow a property owner who prevails in an action to recover reasonable costs and attorney fees incurred in litigation from the date of the presentation of the claim to the head of the governmental entity, as opposed to the date the action is filed in court. The net effect of this change will be to permit a prevailing plaintiff to recover more in attorney fees from the government because the property owner will be recovering attorney fees from an earlier period in time and for additional work in preparing the cause of action for court. This revision also deletes the requirement that the court, in awarding reasonable costs and attorney fees, determine that the government’s settlement offer did not constitute a bona fide offer to the property owner which would have resolved the claim during the notice period.

The bill also provides that if proper notice is not provided to a property owner after a law or regulation’s enactment, the property owner may, *at any time after enactment*, notify the head of the government in writing by certified mail and e-mail, if available, that the property owner deems the law or regulation’s impact on the property owner’s real property to be clear and unequivocal in its terms and, as such, restrictive of allowable uses. The government then has 45 days from receipt of the notice to respond in writing by certified mail and e-mail, if available, to describe the limitations imposed on the property by the law or regulation. The property owner is not subsequently required to formally pursue an application for a development order,

⁴² *Rainbow River Conservation, Inc. v. Rainbow River Ranch*, 189 So. 3d 312 (Fla. 5th DCA 2016).

development permit, or building permit to bring a claim under the Bert Harris Act, but any claim must be filed within one year after the date the property owner receives the government's response.

Finally, the bill specifies that the changes to this section, except for the changes made to the definitions, apply only to Bert Harris Act claims brought in response to government actions taken on or after July 1, 2021, pursuant to language in section 3.

Governmental Exactions (Section 2)

This provision permits a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. The property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

The changes in the bill to the governmental exaction statute apply to claims that are made in response to actions taken by governmental entities on or after July 1, 2021, pursuant to language in section 3)

Florida Land Use and Environmental Dispute Resolution Act (Section 4)

The bill amends the definition of "land" or "real property" to match, by cross-reference, the newly amended definition of "real property" in the Bert Harris Act.

"WHEREAS" Clauses

The bill contains five "Whereas" clauses. The first three clauses recognize that the Bert J. Harris, Jr., Private Property Rights Protection Act was enacted in 1995, that the state has historically recognized subsurface estates, and that the bill clarifies the definition of property to preserve the original intent of the act. The final two clauses recognize that the state has an interest in the timely resolution of claims brought under the act, and that landowners and governmental entities benefit by knowing when a claim brought under the act may be asserted to avoid unnecessary future litigation.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Property owners will likely be able to have more freedom to develop and use their real property and generate income by doing so. Alternatively, property owners will have a better chance at receiving compensation for regulatory burdens imposed on their property.

C. Government Sector Impact:

CS/SB 1876 might have a financial impact on local governments by making it easier for a property owner to challenge a local government regulation that burdens his or her property and increasing the amount of attorney fees and costs that a local government must pay to a property owner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001, 70.45, and 70.51.

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

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

CS by Judiciary on March 22, 2021:

The committee substitutes adds the substance of SB 1380 to SB 1876, but then removes the previous revisions in SB 1876 pertaining to the Florida Land Use and Environmental Dispute Resolution Act, except for the definition of “land” or “real property.” The

committee substitute also adds five “Whereas” clauses that were not contained in either bill.

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 Albritton

26-01487-21

20211876__

A bill to be entitled

An act relating to governmental actions affecting private property rights; amending s. 70.001, F.S.; revising notice of claim requirements for property owners; creating a presumption that certain settlement offers protect the public interest; specifying that property owners retain the option to have a court determine awards of compensation; authorizing property owners to bring claims against governmental entities in certain circumstances; providing that property owners are not required to submit formal development applications or proceed through formal application processes to bring claims in specified circumstances; amending s. 70.45, F.S.; defining the term "imposed" or "imposition"; authorizing property owners to bring actions to declare prohibited exactions invalid; providing applicability; amending s. 70.51, F.S.; providing and revising definitions; providing for resolution of disputes concerning comprehensive plan amendments under the Florida Land Use and Environmental Dispute Resolution Act; revising requirements for initiating a proceeding under the act; providing for an award of attorney fees and costs to property owners who successfully bring actions to compel a governmental entity to participate in certain proceedings; revising provisions related to the tolling of certain administrative proceedings; revising the time periods for a governmental entity to respond to a request for relief; requiring mediations

26-01487-21

20211876__

to be conducted according to specified provisions;
requiring the governmental entity's conduct in dispute
resolution to be considered in determining whether
regulatory efforts were unreasonable or unfairly
burdened use of the property; revising the deadline
for a magistrate to prepare and file a written
recommendation; revising provisions related to
settlement agreements; specifying that a governmental
entity has authority to rehear and reconsider certain
actions pursuant to a special magistrate's
recommendation; providing requirements for such
rehearing and reconsideration; revising provisions
related to other remedies that may be pursued by a
property owner; providing requirements for guidelines
adopted by governmental entities for dispute
resolution proceedings; specifying that certain
settlement discussions are confidential; requiring
that actions on proposed settlements be taken at open
meetings; deleting obsolete language; amending s.
163.3181, F.S.; conforming provisions to changes made
by the act; providing an effective date.

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

Section 1. Subsections (4), (5), and (6) and paragraph (a)
of subsection (11) of section 70.001, Florida Statutes, are
amended to read:

70.001 Private property rights protection.—

(4) (a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~

26-01487-21

20211876__

59 filing an action under this section against a governmental
60 entity, a property owner who seeks compensation under this
61 section must present the claim in writing to the head of the
62 governmental entity, ~~except that if the property is classified~~
63 ~~as agricultural pursuant to s. 193.461, the notice period is 90~~
64 ~~days~~. The property owner must submit, along with the claim, a
65 bona fide, valid appraisal that supports the claim and
66 demonstrates the loss in fair market value to the real property.
67 If the action of government is the culmination of a process that
68 involves more than one governmental entity, or if a complete
69 resolution of all relevant issues, in the view of the property
70 owner or in the view of a governmental entity to whom a claim is
71 presented, requires the active participation of more than one
72 governmental entity, the property owner shall present the claim
73 as provided in this section to each of the governmental
74 entities.

75 (b) The governmental entity shall provide written notice of
76 the claim to all parties to any administrative action that gave
77 rise to the claim, and to owners of real property contiguous to
78 the owner's property at the addresses listed on the most recent
79 county tax rolls. Within 15 days after the claim is presented,
80 the governmental entity shall report the claim in writing to the
81 Department of Legal Affairs, and shall provide the department
82 with the name, address, and telephone number of the employee of
83 the governmental entity from whom additional information may be
84 obtained about the claim during the pendency of the claim and
85 any subsequent judicial action.

86 (c) During the 90-day-notice period ~~or the 150-day-notice~~
87 ~~period~~, unless extended by agreement of the parties, the

26-01487-21

20211876__

governmental entity shall make a written settlement offer to
effectuate:

1. An adjustment of land development or permit standards or
other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or
use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite
mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more
comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, a special
exception, or any other extraordinary relief.

10. Purchase of the real property, or an interest therein,
by an appropriate governmental entity or payment of
compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts a settlement offer, ~~either~~ before
or after filing an action, the governmental entity may implement
the settlement offer by appropriate development agreement; by
issuing a variance, a special exception, or any other
extraordinary relief; or by any other appropriate method,
subject to paragraph (d).

(d)1. When a governmental entity enters into a settlement
agreement under this section which would have the effect of a

26-01487-21

20211876__

modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. Settlement offers made pursuant to paragraph (c) shall be presumed to protect the public interest.

2. When a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered so long as the agreement fully resolves all claims asserted under this section.

(5) (a) During the 90-day-notice period ~~or the 150-day-notice period~~, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a written statement of allowable uses identifying the allowable

26-01487-21

20211876__

146 uses to which the subject property may be put. The failure of
147 the governmental entity to issue a statement of allowable uses
148 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
149 ~~period~~ shall be deemed a denial for purposes of allowing a
150 property owner to file an action in the circuit court under this
151 section. If a written statement of allowable uses is issued, it
152 constitutes the last prerequisite to judicial review for the
153 purposes of the judicial proceeding created by this section,
154 notwithstanding the availability of other administrative
155 remedies.

156 (b) If the property owner rejects the settlement offer and
157 the statement of allowable uses of the governmental entity or
158 entities, the property owner may file a claim for compensation
159 in the circuit court, a copy of which shall be served
160 contemporaneously on the head of each of the governmental
161 entities that made a settlement offer and a statement of
162 allowable uses that was rejected by the property owner. Actions
163 under this section shall be brought only in the county where the
164 real property is located.

165 (6)(a) The circuit court shall determine whether an
166 existing use of the real property or a vested right to a
167 specific use of the real property existed and, if so, whether,
168 considering the settlement offer and statement of allowable
169 uses, the governmental entity or entities have inordinately
170 burdened the real property. If the actions of more than one
171 governmental entity, considering any settlement offers and
172 statement of allowable uses, are responsible for the action that
173 imposed the inordinate burden on the real property of the
174 property owner, the court shall determine the percentage of

26-01487-21

20211876__

responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The property owner retains the option to forego a jury and elect to have the court determine the award of compensation. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity or entities. In determining the award of compensation,

26-01487-21

20211876__

consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the presentation of the claim to the head of the governmental entity pursuant to paragraph (4) (a) ~~the filing of the circuit court action~~, if the property owner prevails in the action ~~and the court determines that the settlement offer, including the statement of allowable uses, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day notice period or the 150-day notice period.~~

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did

26-01487-21

20211876__

not accept a bona fide settlement offer, including the statement of allowable uses, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period ~~or the 150-day-notice period.~~

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

(d) Within 15 days after the execution of any settlement pursuant to this section, or the issuance of any judgment pursuant to this section, the governmental entity shall provide a copy of the settlement or judgment to the Department of Legal Affairs.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue.

(a) For purposes of determining when this 1-year claim period accrues:

1.a. A law or regulation is first applied upon enactment

26-01487-21

20211876__

and notice as provided for in this ~~sub-subparagraph~~ ~~subparagraph~~ if the impact of the law or regulation on the real property is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent at the address referenced in the jurisdiction's most current ad valorem tax records. The fact that the law or regulation could be modified, varied, or altered under any other process or procedure does not preclude the impact of the law or regulation on a property from being clear or unequivocal pursuant to this ~~sub-subparagraph~~ ~~subparagraph~~. Any notice under this ~~sub-subparagraph~~ ~~subparagraph~~ shall be provided after the enactment of the law or regulation and shall inform the property owner or registered agent that the law or regulation may impact the property owner's existing property rights and that the property owner may have only 1 year after ~~from~~ receipt of the notice to pursue any rights established under this section.

b. If the notice required in sub-subparagraph a. is not provided to the property owner, the property owner may at any time after enactment notify the head of the governmental entity in writing via certified mail and, if available, e-mail that the property owner deems the impact of the law or regulation on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of uses allowed on the property before the enactment. Within 45 days after receipt of a notice under this sub-subparagraph, the governmental entity in receipt of the notice must respond in writing via certified mail and, if available, e-mail to describe the limitations imposed on the property by the law or regulation. The property owner is not required to formally pursue an application for a development

26-01487-21

20211876__

order, development permit, or building permit, as such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim pursuant to paragraph (4)(a). However, any such claim must be filed within 1 year after the date of the property owner's receipt of the notice from the governmental entity of the limitations on use imposed on the real property.

2. Otherwise, the law or regulation is first applied to the property when there is a formal denial of a written request for development or variance.

Section 2. Present paragraphs (c), (d), and (e) of subsection (1) of section 70.45, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, a new paragraph (c) is added to that subsection, and subsections (2), (4), and (5) of that section are amended, to read:

70.45 Governmental exactions.—

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

(c) "Imposed" or "imposition" as it relates to a prohibited exaction or condition of approval refers to the time at which the property owner must comply with the prohibited exaction or condition of approval.

(2) In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction. Such action may ~~not~~ be brought by a property owner at the property owner's discretion when ~~until~~ a prohibited exaction is actually imposed or when it is required in writing as a final condition of approval for the requested use of real property. The right to bring an action under this

26-01487-21

20211876__

section may not be waived. This section does not apply to impact fees adopted under s. 163.31801 or non-ad valorem assessments as defined in s. 197.3632.

(4) For each claim filed under this section, the governmental entity has the burden of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The property owner has the burden of proving damages that result from a prohibited exaction.

(5) The court may award attorney fees and costs to the prevailing party; however, if the court determines that the challenged exaction which is the subject of the claim lacks an essential nexus to a legitimate public purpose, the court shall award attorney fees and costs to the property owner.

Section 3. The amendments made by this act to ss. 70.001 and 70.45, Florida Statutes, apply to claims made in response to actions taken by governmental entities on or after July 1, 2021.

Section 4. Subsections (2), (3), and (4), paragraph (b) of subsection (5), paragraphs (a), (b), and (c) of subsection (6), subsections (8) and (10) through (13), paragraph (a) of subsection (15), paragraph (a) of subsection (16), and subsections (17) through (21), (24), (25), (26), (28), and (30) of section 70.51, Florida Statutes, are amended to read:

70.51 Land use and environmental dispute resolution.—

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

(a) "Comprehensive plan amendment" means a governmental action subject to s. 163.3181(4).

(b) ~~(a)~~ "Development order" means any order, or notice of

26-01487-21

20211876__

349 proposed state or regional governmental agency action, which is
350 or will have the effect of granting, denying, or granting with
351 conditions an application for a development permit, and includes
352 the rezoning of a specific parcel. ~~Actions by the state or a~~
353 ~~local government on comprehensive plan amendments are not~~
354 ~~development orders.~~

355 (c) ~~(b)~~ "Development permit" means any building permit,
356 zoning permit, subdivision approval, certification, special
357 exception, variance, or any other similar action of local
358 government, as well as any permit authorized to be issued under
359 state law by state, regional, or local government which has the
360 effect of authorizing the development of real property
361 including, but not limited to, programs implementing chapters
362 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.

363 (h) ~~(e)~~ "Special magistrate" means a person selected by the
364 parties to perform the duties prescribed in this section. The
365 special magistrate must be a resident of the state and possess
366 experience and expertise in mediation and at least one of the
367 following disciplines and a working familiarity with the others:
368 land use and environmental permitting, land planning, land
369 economics, local and state government organization and powers,
370 and the law governing the same. A special magistrate is not
371 required to be a certified mediator.

372 (d) "Enforcement action" means any civil or administrative
373 action by a governmental entity intended to enforce any law,
374 ordinance, regulation, rule, or policy related to the
375 development or use of real property. The term includes, but is
376 not limited to, any action taken under chapter 162, such as a
377 notice of violation, order, or placement of a lien, or the

26-01487-21

20211876__

378 service of a notice of violation or an order to correct a
379 condition, or an equivalent action, by a state agency.

380 (g)~~(d)~~ "Owner" means a person with a legal or equitable
381 interest in real property who filed an application for a
382 development permit for the property at the state, regional, or
383 local level and who received a development order, who filed a
384 comprehensive plan amendment, or who holds legal title to or who
385 has a legal or equitable interest in real property that is
386 subject to, or is otherwise a person subject to, an enforcement
387 action of a governmental entity.

388 (i)~~(e)~~ "Proposed Use of the property" means the proposal
389 filed by the owner to develop his or her real property or the
390 actual use of the property giving rise to an enforcement action.

391 (e)~~(f)~~ "Governmental entity" includes an agency of the
392 state, a regional or a local government created by the State
393 Constitution or by general or special act, any county or
394 municipality, or any other entity that independently exercises
395 governmental authority. The term does not include the United
396 States or any of its agencies.

397 (f)~~(g)~~ "Land" or "real property" means land and includes
398 any appurtenances and improvements to the land, including any
399 other relevant real property in which the owner had a relevant
400 interest.

401 (3) Any owner who believes that a development order, either
402 separately or in conjunction with other development orders, a
403 comprehensive plan amendment, or an enforcement action of a
404 governmental entity~~,~~ is unreasonable or unfairly burdens the use
405 of the owner's real property~~,~~ may apply within 30 days after
406 receipt of the order, comprehensive plan amendment, or notice of

26-01487-21

20211876__

the governmental action for relief under this section.

(4) To initiate a proceeding under this section, an owner must file a request for relief with the elected or appointed head of the governmental entity that issued the development order or orders, denied the comprehensive plan amendment, or ~~that~~ initiated the enforcement action. Filing may be by electronic mail to the official e-mail address of the head of the governmental entity, by hand delivery to such person, or by United States mail to such person at his or her official address. Formal service of process is not required for such filing. The process shall be considered initiated as of the date the petition is filed with the head of the governmental entity pursuant to this subsection. The head of the governmental entity may not charge the owner for the request for relief and must forward the request for relief to the special magistrate who is mutually agreed upon by the owner and the governmental entity within 10 days after receipt of the request.

(5) The governmental entity with whom a request has been filed shall also serve a copy of the request for relief by United States mail or by hand delivery to:

(b) Any substantially affected party who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for any development order, comprehensive plan amendment, at issue or enforcement action at issue. Notice under this paragraph is required only if that party indicated a desire to receive notice of any subsequent special magistrate proceedings occurring on the development order, comprehensive plan amendment, or enforcement action. Each governmental entity must maintain in

26-01487-21

20211876__

its files relating to each particular development order,
comprehensive plan amendment, or enforcement action ~~orders~~ a
mailing list of persons who have presented oral or written
testimony and who have requested notice.

(6) The request for relief must contain:

(a) A brief statement of the owner's ~~proposed~~ use of the
property.

(b) A summary of the development order or comprehensive
plan amendment or a description of the enforcement action. A
copy of the development order or comprehensive plan amendment or
the documentation of an enforcement action at issue must be
attached to the request.

(c) A brief statement of the impact of the development
order, denial of the comprehensive plan amendment, or
enforcement action on the ability of the owner to achieve the
~~proposed~~ use of the property.

(8) The special magistrate has the sole authority to
determine whether a request for relief is complete and was
timely filed and may conduct a hearing on whether the request
for relief should be dismissed for failing to include the
information required in subsection (6). If the special
magistrate dismisses the case, the special magistrate shall
allow the owner to amend the request and refile. Failure to file
an adequate amended request within the time specified shall
result in a dismissal with prejudice as to this proceeding. A
property owner who is successful in a suit to require a
governmental entity to participate in a proceeding under this
section shall be awarded attorney fees and costs.

(10) (a) Before initiating a special magistrate proceeding

26-01487-21

20211876__

to review a local development order, comprehensive plan amendment, or local enforcement action, the owner must exhaust all nonjudicial local government administrative appeals if the appeals take no longer than 4 months. Once nonjudicial local administrative appeals are exhausted and the development order, comprehensive plan amendment, or enforcement action is final, or within 4 months after issuance of the development order, denial of the comprehensive plan amendment, or notice of the enforcement action if the owner has pursued local administrative appeals even if the appeals have not been concluded, the owner may initiate a proceeding under this section. Initiation of a proceeding tolls rendition or effectiveness of the development order, denial of the comprehensive plan amendment, the time for seeking judicial review of a local government development order or enforcement action until the special magistrate's recommendation is acted upon by the local government. Election by the owner to file for judicial review of a local government development order, comprehensive plan amendment, or enforcement action before ~~prior to~~ initiating a proceeding under this section waives any right to a special magistrate proceeding.

(b) If an owner requests special magistrate relief from a development order, comprehensive plan amendment, or enforcement action issued by a state or regional agency, the time for challenging agency action under ss. 120.569 and 120.57 is tolled until the agency acts upon the recommendation of the special magistrate or the proceeding is terminated by the owner. If an owner chooses to bring a proceeding under ss. 120.569 and 120.57 before initiating a special magistrate proceeding, then the owner waives any right to a special magistrate proceeding unless

26-01487-21

20211876__

all parties consent to proceeding to mediation.

(11) The initial party to the proceeding is the governmental entity that issues the development order or comprehensive plan amendment to the owner or that is taking the enforcement action. In those instances when the development order, comprehensive plan amendment, or enforcement action is the culmination of a process involving more than one governmental entity or when a complete resolution of all relevant issues would require the active participation of more than one governmental entity, the special magistrate may, upon application of a party, join those governmental entities as parties to the proceeding if it will assist in effecting the purposes of this section, and those governmental entities so joined shall actively participate in the procedure.

(12) Within 21 days after the date on which the notice was provided under subsection (5) ~~receipt of the request for relief~~, any owner of land contiguous to the owner's property and any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the development order, comprehensive plan amendment, or enforcement action at issue may make a written request to participate in the hearing by transmitting such request to the official who signed the notice ~~proceeding~~. Those persons may be permitted to participate in the hearing but shall not be granted party or intervenor status. The participation of such persons is limited to addressing issues raised regarding alternatives, variances, and other types of adjustment to the development order, comprehensive plan amendment, or enforcement action which may

26-01487-21

20211876__

523 impact their substantial interests, including denial of the
524 development order or comprehensive plan amendment or application
525 of an enforcement action.

526 (13) Each party must make efforts to assure that those
527 persons qualified by training or experience necessary to address
528 issues raised by the request or by the special magistrate and
529 further qualified to address alternatives, variances, and other
530 types of modifications to the development order, comprehensive
531 plan amendment, or enforcement action are present at the
532 hearing.

533 (15) (a) The special magistrate shall hold a hearing within
534 60 ~~45~~ days after his or her receipt of the request for relief
535 unless a different date is agreed to by all the parties. The
536 hearing must be held in the county in which the property is
537 located.

538 (16) (a) Five days after the date on which the special
539 magistrate is selected, or 21 days after the date on which the
540 petition is served ~~Fifteen days following the filing of a~~
541 ~~request for relief, whichever is earlier,~~ the governmental
542 entity that issued the development order or comprehensive plan
543 amendment or that is taking the enforcement action shall file a
544 response to the request for relief with the special magistrate
545 together with a copy to the owner. The response must set forth
546 in reasonable detail the position of the governmental entity
547 regarding the matters alleged by the owner. The response must
548 include a brief statement explaining the public purpose of the
549 regulations on which the development order, comprehensive plan
550 amendment, or enforcement action is based.

551 (17) In all respects, the hearing must be informal and open

26-01487-21

20211876__

to the public and does not require the use of an attorney. The hearing must operate at the direction and under the supervision of the special magistrate. The object of the hearing is to focus attention on the impact of the governmental action giving rise to the request for relief and to explore alternatives to the development order, comprehensive plan amendment, or enforcement action and other regulatory efforts by the governmental entities in order to recommend relief, when appropriate, to the owner.

(a) The first responsibility of the special magistrate is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's ~~proposed~~ use of the property or adjustment in the development order, comprehensive plan amendment, or enforcement action or regulatory efforts by one or more of the governmental parties may be reached. Accordingly, the special magistrate shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution. The parties shall be represented at the mediation by persons with authority to bind their respective parties to a solution, or by persons with authority to recommend a solution directly to the persons with authority to bind their respective parties to a solution. The mediation shall be conducted according to ss. 44.401-44.406.

(b) If an acceptable solution is not reached by the parties after the special magistrate's attempt at mediation, the special magistrate shall consider the facts and circumstances set forth in the request for relief and any responses and any other information produced at the hearing in order to determine whether the action by the governmental entity or entities is unreasonable or unfairly burdens the real property.

26-01487-21

20211876__

(c) In conducting the hearing, the special magistrate may hear from all parties and witnesses that are necessary to an understanding of the matter. The special magistrate shall weigh all information offered at the hearing.

(18) The circumstances to be examined in determining whether the development order, comprehensive plan amendment, or enforcement action, or the development order, comprehensive plan amendment, or enforcement action in conjunction with regulatory efforts of other governmental parties, is unreasonable or unfairly burdens use of the property may include, but are not limited to:

(a) The history of the real property, including when it was purchased, how much was purchased, where it is located, the nature of the title, the composition of the property, and how it was initially used.

(b) The history or development and use of the real property, including what was developed on the property and by whom, if it was subdivided and how and to whom it was sold, whether plats were filed or recorded, and whether infrastructure and other public services or improvements may have been dedicated to the public.

(c) The history of environmental protection and land use controls and other regulations, including how and when the land was classified, how use was proscribed, and what changes in classifications occurred.

(d) The present nature and extent of the real property, including its natural and altered characteristics.

(e) The reasonable expectations of the owner at the time of acquisition, or immediately before ~~prior to~~ the implementation

26-01487-21

20211876__

of the regulation at issue, whichever is later, under the regulations then in effect and under common law.

(f) The public purpose sought to be achieved by the development order, comprehensive plan amendment, or enforcement action, including the nature and magnitude of the problem addressed by the underlying regulations on which the development order, comprehensive plan amendment, or enforcement action is based; whether the development order, comprehensive plan amendment, or enforcement action is necessary to the achievement of the public purpose; and whether there are alternative development orders, comprehensive plan amendments, or enforcement action conditions that would achieve the public purpose and allow for reduced restrictions on the use of the property.

(g) Uses authorized for and restrictions placed on similar property.

(h) Whether the governmental entity attempted to resolve the dispute in good faith, including, but not limited to, adhering to the deadlines provided in this section.

(i) ~~(h)~~ Any other information determined relevant by the special magistrate.

(19) Within 14 days after the conclusion of the hearing, or when the parties propose a settlement agreement for entry by the special magistrate pursuant to subsection (22), the special magistrate shall prepare and file with all parties a written recommendation.

(a) If the special magistrate finds and concludes that the development order at issue, or the development order, comprehensive plan amendment, or enforcement action in

26-01487-21

20211876__

639 combination with the actions or regulations of other
640 governmental entities, is not unreasonable or does not unfairly
641 burden the use of the owner's property, the special magistrate
642 must recommend that the development order, comprehensive plan
643 amendment, or enforcement action remain undisturbed and the
644 proceeding shall end, subject to the owner's retention of all
645 other available remedies.

646 (b) If the special magistrate finds and concludes that the
647 development order, comprehensive plan amendment, or enforcement
648 action, or the development order, comprehensive plan amendment,
649 or enforcement action in combination with the actions or
650 regulations of other governmental entities, is unreasonable or
651 unfairly burdens use of the owner's property, the special
652 magistrate, with the owner's consent to proceed, may recommend
653 one or more alternatives that protect the public interest served
654 by the development order, comprehensive plan amendment, or
655 enforcement action and regulations at issue but allow for
656 reduced restraints on the use of the owner's real property,
657 including, but not limited to:

658 1. An adjustment of land development or permit standards or
659 other provisions controlling the development or use of land.

660 2. Increases or modifications in the density, intensity, or
661 use of areas of development.

662 3. The transfer of development rights.

663 4. Land swaps or exchanges.

664 5. Mitigation, including payments in lieu of onsite
665 mitigation.

666 6. Location on the least sensitive portion of the property.

667 7. Conditioning the amount of development or use permitted.

26-01487-21

20211876__

668 8. A requirement that issues be addressed on a more
669 comprehensive basis than a single ~~proposed~~ use or development.

670 9. Rehearing or reconsideration and issuance of the
671 development order, comprehensive plan amendment, or enforcement
672 action with or without modifications or additional stipulations,
673 or a variance, special exception, or other extraordinary relief,
674 including withdrawal of the enforcement action.

675 10. Purchase of the real property, or an interest therein,
676 by an appropriate governmental entity.

677 (c) If the parties reach a proposed settlement agreement at
678 any time before the special magistrate enters a recommendation,
679 which agreement may remain subject to approval by the
680 governmental entity, the parties may request that the special
681 magistrate transmit the settlement agreement to the governmental
682 entity as the special magistrate's findings and recommendation
683 for consideration and approval by the governmental entity, and
684 the special magistrate need not include the findings or
685 conclusions set forth in paragraph (a) or paragraph (b) ~~This~~
686 ~~subsection does not prohibit the owner and governmental entity~~
687 ~~from entering into an agreement as to the permissible use of the~~
688 ~~property prior to the special magistrate entering a~~
689 ~~recommendation. An agreement for a permissible use must be~~
690 ~~incorporated in the special magistrate's recommendation.~~

691 (d) This section provides legislative authority for the
692 governmental entity or tribunal to rehear and reconsider its
693 prior action on a development order, comprehensive plan
694 amendment, or enforcement action pursuant to, and in
695 consideration of, a special magistrate's recommendation,
696 regardless of whether existing statutes, rules, ordinances, or

26-01487-21

20211876__

697 regulations provide for such a procedure. Any such rehearing or
698 reconsideration shall be at a public hearing noticed and
699 otherwise conducted in the same manner as the original hearing.
700 The tribunal shall treat the special magistrate's findings, or a
701 settlement agreement, as evidence for modification of its prior
702 development order, comprehensive plan amendment, or enforcement
703 action, and shall provide an opportunity for any person who
704 participated in the original hearing or the special magistrate's
705 proceeding to provide additional evidence and testimony. The
706 tribunal's action on the special magistrate's recommendation
707 shall then become the final order on the development order,
708 comprehensive plan amendment, or enforcement action.

709 (20) The special magistrate's findings and recommendation
710 are ~~is~~ a public record under chapter 119. However, actions or
711 statements of all participants to the special magistrate
712 mediation proceeding ~~proceeding~~ are evidence of an offer to compromise and
713 inadmissible in any proceeding, judicial or administrative.

714 (21) Within 45 days after receipt of the special
715 magistrate's findings and recommendation, the governmental
716 entity responsible for the development order, comprehensive plan
717 amendment, or enforcement action and other governmental entities
718 participating in the proceeding must consult among themselves
719 and each governmental entity must:

720 (a) Accept or modify the recommendation of the special
721 magistrate, including any proposed settlement agreement, as
722 submitted and proceed to implement it by development agreement,
723 when appropriate, by rehearing or reconsidering the development
724 order or enforcement action, or by other method, in the ordinary
725 course and consistent with the rules and procedures of that

26-01487-21

20211876__

governmental entity. However, the decision of the governmental entity to accept the recommendation of the special magistrate with respect to rehearing or reconsidering the prior development order or enforcement action or granting a modification, variance, or special exception to the application of statutes, rules, regulations, or ordinances as they would otherwise apply to the subject property does not require an owner to duplicate previous processes in which the owner has participated in order to effectuate the granting of the modification, variance, or special exception; or

~~(b) Modify the recommendation as submitted by the special magistrate and proceed to implement it by development agreement, when appropriate, or by other method, in the ordinary course and consistent with the rules and procedures of that governmental entity; or~~

(b) ~~(e)~~ Reject the recommendation as submitted by the special magistrate. Failure to act within 45 days is a rejection unless the period is extended by agreement of the owner and issuer of the development order, comprehensive plan amendment, or enforcement action.

(24) The procedure created by this section is not itself, nor does it create, a judicial cause of action. Once the governmental entity acts on the special magistrate's recommendation, the owner may pursue whatever administrative or judicial remedies are applicable ~~elect to file suit in a court of competent jurisdiction~~. Invoking the procedures of this section is not a condition precedent to filing a civil action.

(25) Regardless of the action the governmental entity takes on the special magistrate's findings and recommendation, a

26-01487-21

20211876__

recommendation that the development order, comprehensive plan amendment, or enforcement action, or the development order, comprehensive plan amendment, or enforcement action in combination with other governmental regulatory actions, is unreasonable or unfairly burdens use of the owner's real property may serve as an indication of sufficient hardship to support waivers of or modification, variances, or special exceptions to the application of statutes, rules, regulations, or ordinances to the subject property, whether as a part of the implementation of the recommendation, in a subsequent application, or in an administrative or judicial challenge to the action of the governmental entity. However, the special magistrate's findings and recommendation are not preclusive to any issue or defense in any subsequent administrative or judicial proceeding.

(26) A special magistrate's findings and recommendation under this section constitutes data in support of, and a support document for, a comprehensive plan or comprehensive plan amendment, but is not, in and of itself, dispositive of a determination of compliance with chapter 163.

(28) Each governmental entity may establish procedural guidelines to govern the conduct of proceedings authorized by this section, which must include, but are not limited to, payment of special magistrate fees and expenses, including the costs of providing notice and effecting service of the request for relief under this section, which shall be borne equally by the governmental entities and the owner. Such guidelines may not modify the requirements and relief provided by this section in any way.

26-01487-21

20211876__

(30) In order to encourage the resolution of disputes, and regardless of whether the parties are engaged in pending litigation recently before a court or administrative agency, a governmental entity may conduct meetings following the procedures in s. 286.011(8) at any time after the governmental entity responds in writing to a request for relief to discuss settlement strategies, but shall not take action on a proposed settlement agreement except at a noticed public meeting ~~This section applies only to development orders issued, modified, or amended, or to enforcement actions issued, on or after October 1, 1995.~~

Section 5. Subsection (4) of section 163.3181, Florida Statutes, is amended to read:

163.3181 Public participation in the comprehensive planning process; intent; alternative dispute resolution.-

(4) If a local government denies an owner's request for an amendment to the comprehensive plan which is applicable to the property of the owner, the owner may initiate a dispute resolution proceeding under s. 70.51 ~~the local government must afford an opportunity to the owner for informal mediation or other alternative dispute resolution. The costs of the mediation or other alternative dispute resolution shall be borne equally by the local government and the owner. If the owner requests mediation, the time for bringing a judicial action is tolled until the completion of the mediation or 120 days, whichever is earlier.~~

Section 6. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 10, 2021

I respectfully request that **Senate Bill #1876**, relating to Government Actions Affecting Private Property, be placed on the:

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

A handwritten signature in cursive script, reading "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 1876

Bill Number (if applicable)

296194

Topic Governmental Actions Affecting Private Property Rights

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-22-21
Meeting Date

1876
Bill Number (if applicable)

Topic Governmental Actions Affecting Private Property Rights
Name Kent Satriet
Job Title Attorney, Hopping Green + Sons P.A.
Address 119 South Monroe St.
City TLH State FL Zip 32309
Phone 425-2207
Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Hopping

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

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

SB 1876

Bill Number (if applicable)

Topic Govt Actions Affecting Private Prop. Rights

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Pl

Phone 904-671-4008

St Augustine FL 32084

Email jwest@1000fol.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

1876

Bill Number (if applicable)

Topic

Private Property Rights

Amendment Barcode (if applicable)

Name

Jim Spratt

Job Title

Address

1195 Monroe St

Street

Phone

850-228-1296

City

State

Zip

Email

Jim.spratt@flaforestry.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida Forestry Association

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22
Meeting Date

SB 1876
Bill Number (if applicable)

Topic SB 1876, Governmental Actions Affecting Private Property Rights Amendment Barcode (if applicable)
Name Landon Hoffman

Job Title legislative Affairs

Address 2057 W Forest Dr Phone 850 508 1236
Street
Tallahassee FL 32303 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Farm Bureau

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

1876

Bill Number (if applicable)

Topic Governmental Actions Affecting Private Property Rights

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address PO Box 1757

Phone 850-701-3676

Street

Tallahassee

FL

32301

Email dcruz@flcities.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 1876

Bill Number (if applicable)

Topic Governmental Actions Affecting Private Property Rights

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-21

Meeting Date

1876

Bill Number (if applicable)

Topic REVIEW ~~OF~~ FROM BURDEN

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1934 SHELBY CT

Street

Phone 941-323-2404

TLH

City

FL 32308

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SIERRA CLUB 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.

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 1922

INTRODUCER: Senators Gruters and Hooper

SUBJECT: Dissolution of Marriage

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			AP	
3.			RC	

I. Summary:

SB 1922 amends family law issues related to alimony, timesharing between parents of a minor child, and bifurcation of a dissolution of marriage case.

Significant changes to alimony law include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- The criteria for determining any form of alimony is expanded to include a presumption that both parties will have a lower standard of living post-dissolution.
- A court may not require an obligor to purchase life insurance to secure the award of alimony. However, an obligor must cooperate with an obligee's application for life insurance on the obligor.
- The characterization of a marriage as either short-term, moderate-term, or long-term is repealed. The related presumptions regarding alimony appropriate to the term of the marriage are also repealed.
- Rehabilitative alimony is limited to the lesser of 5 years or 50 percent of the term of the marriage.
- Durational alimony terminates upon a showing that the obligee is in a supportive relationship.
- Durational alimony is limited in time to 50 percent of the term of the marriage, may only be awarded where other forms of alimony are insufficient, and is limited in amount to no more than 25 percent of the difference between the parties' net incomes.
- No alimony may be awarded to a party who has a net income that is equal to or more than the other party's net income.
- For purposes of determining alimony, VA disability benefits, and state reemployment assistance or unemployment compensation, are not considered income.

- A divorcing spouse who has reasonably retired cannot be ordered to pay alimony unless the other spouse is too young for Social Security retirement benefits and qualifies for the medically needy program.
- An existing alimony award may be modified or terminated upon early retirement if such retirement is reasonable.
- An existing alimony award terminates when the obligor reaches the Social Security full retirement age, unless durational alimony has been paid for less than 50 percent of the term of the marriage, the obligee is too young for Social Security retirement benefits, and the obligee qualifies for the medically needy program.
- A petition for modification or termination in anticipation of retirement may be filed up to 12 months prior to the planned retirement date.
- The concept of a supportive relationship is expanded to allow proof of a recent supportive relationship and a corresponding right to seek reimbursement of alimony paid. The description of a supportive relationship is expanded by repeal of the requirement to show cohabitation and by adding engagement to be married to another as proof towards a finding of a supportive relationship.

Timesharing with minor children is changed by creation of a presumption in favor of equal time-sharing between parents.

Bifurcation refers to the process where the court dissolves the marriage, reserving other matters such as property distribution, alimony, timesharing, and child support for future court action. The bill gives either party to a dissolution of marriage the right to bifurcation if the case has been pending for longer than one year from the date the respondent received the summons.

The bill is effective July 1, 2021. Changes to alimony apply to existing cases on the effective date. Changes to timesharing and bifurcation apply to cases filed on or after the effective date.

II. Present Situation:

Dissolution of marriage may involve many different but related matters. Three matters related to dissolution addressed by this bill are alimony, timesharing with children, and bifurcation. Note that the timesharing changes also affect parents who never married.

Alimony

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.¹ Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing. While child support is determined primarily through a statutory formula, alimony is determined at the discretion of the trial court based on statutory and equitable factors.

¹ Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).

Calculation of the Amount of Alimony

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.² After making an initial determination to award alimony, the court must consider ten factors:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.³

The income tax factor has less relevance than in the past. Beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the obligor, or includable in the income of the obligee, if made under a divorce or separation agreement executed after December 31, 2018. This also applies to a divorce or separation agreement executed on or before December 31, 2018, and modified after December 31, 2018, as long as the modification changes the terms of the alimony or separate maintenance payments and states that the alimony or separate maintenance payments are not deductible by the obligor or includable in the income of the obligee. On the other hand, alimony or separate maintenance payments are generally deductible from the income of the obligor and includable in the income of the obligee, if made under a divorce or separation agreement executed on or before December 31, 2018, even if the agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding sentence.⁴

The court may also consider adultery by either spouse in a decision to award alimony.⁵ That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.⁶

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.⁷ A court making the requirement must first make specific findings regarding the availability and

² Section 61.08(2), F.S.

³ Section 61.08(2)(a)-(j), F.S.

⁴ IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019* (March 3, 2021) available at <https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019> (last viewed March 13, 2021).

⁵ Section 61.08(1), F.S.

⁶ *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).

⁷ Section 61.08(3), F.S.

cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.⁸ The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."⁹

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.¹⁰ What qualifies as exceptional circumstances is undefined.

Types of Alimony

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action was filed:

- Short term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.¹¹

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.¹²

Bridge-the-gap alimony:¹³

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:¹⁴

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

⁸ *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).

⁹ *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).

¹⁰ Section 61.08(9), F.S.

¹¹ Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.

¹² Section 61.08(1), F.S.

¹³ Section 61.08(5), F.S.

¹⁴ Section 61.08(6), F.S.

Durational alimony:¹⁵

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:¹⁶

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
 - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
 - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
 - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Substantial Change in Circumstances

Where allowed, either party may seek modification of an alimony award on the grounds of a substantial change in circumstances.¹⁷ To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.¹⁸

The court may modify support retroactively to the date of the filing of the motion.¹⁹

¹⁵ Section 61.08(7), F.S.

¹⁶ Section 61.08(8), F.S.

¹⁷ Section 61.14(1)(a), F.S.

¹⁸ *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016).

¹⁹ Section 61.14(1)(a), F.S.

Supportive Relationship

To avoid losing alimony because of remarriage, it was once common to simply “live with” someone. Today, the existence of a supportive relationship between the obligee and a third party may be a substantial change in circumstances that warrants a modification of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.²⁰

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.²¹

Retirement

Voluntary retirement may qualify as a substantial change in circumstances that warrants a modification of alimony. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action. Retirement as a substantial change in circumstances is not addressed in statute. The leading case in this area ruled:

In determining whether a voluntary retirement is reasonable, the court must consider the payor’s age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.²²

An obligor looking into voluntary retirement in the near future faces a difficult decision. The motion cannot be filed until the substantial change in circumstances has actually occurred, that is, the obligor must actually retire. If the court finds that the retirement was not reasonable some months later, the now unemployed obligor must continue to pay the alimony without the job that he or she left and is unlikely to be hired back to.

²⁰ Section 61.14(b), F.S.

²¹ Section 61.14(1)(b)1., F.S.

²² *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

Timesharing with Minor Children

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”²³ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.²⁴ In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.²⁵

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.²⁶

Bifurcation of a Dissolution Case

Normally, a dissolution of marriage case is resolved when the court issues an omnibus final judgment of dissolution, which judgment dissolves the marriage, splits the debts and property of the couple, and, where required, resolves timesharing with the children, child support, and

²³ Section 61.13(2)(c)1., F.S.

²⁴ Section 61.13 (2)(c)2., F.S.

²⁵ Section 61.13(3), F.S.

²⁶ Section 61.13(3)(t), F.S.

alimony. The term “bifurcation” refers to the process whereby the court grants the dissolution of marriage, but reserves jurisdiction to resolve the remaining issues between the parties at a later date.

Parties seek bifurcation mostly for purposes of remarriage. Bifurcation is allowed but its use is discouraged by the courts. The Florida Supreme Court explained why:

[W]e believe the trial court should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children.²⁷

The Florida Supreme Court has established presumptive trial court time standards for the most common types of cases. The time standards are not deadlines, but represent the time within which most cases should be resolved. The time standard for a contested domestic relations case is 180 days from filing to final disposition.²⁸

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.²⁹ There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.³⁰

Presumptions which are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.³¹

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.³² These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced

²⁷ *Cloughton v. Cloughton*, 393 So. 2d 1061, 1062 (Fla. 1980).

²⁸ Fla. R. Jud. Admin. 2.250(a)(1)(C).

²⁹ *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).

³⁰ Section 90.302, F.S.

³¹ *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence § 303.1 (2020 ed.).

³² Section 90.304, F.S.

of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.³³

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill changes alimony law to eliminate permanent alimony as a form of alimony that a court may order. However, an obligor may agree to permanent alimony.

The bill prioritizes the remaining forms of alimony in this order:

- Bridge-the-gap alimony.
- Rehabilitative alimony.
- Durational alimony.

If the court orders a combination of forms of alimony, it must make written findings regarding the basis for the award. A combination may only be awarded to provide greater economic assistance for the purpose of rehabilitation of the obligee.

Criteria for an Award of Alimony

The bill provides that adultery of a spouse may not be the sole basis for awarding or denying alimony unless the adultery contributed to a depletion of marital assets.

The bill amends the 10 factors for consideration in determining the amount of an award of alimony as follows:

- The standard of living established during the marriage factor is limited. In looking at the standard of living during the marriage, the court must take into account the needs and necessities of life for each party after dissolution. The bill also creates a rebuttable presumption that both parties will have a lower standard of living after the dissolution.
- The tax treatment factor is modified by repeal of the portion regarding the tax treatment of the alimony. This reflects a change in the federal tax code effective January 1, 2019.
- The “all sources of income” factor is amended by a change in the definition of “income” at s. 61.046(8), F.S., to exclude VA disability payments, reemployment assistance, and unemployment compensation as income.³⁴
- A court using the “any other factor” language must specify the other factor and the findings of fact justifying the factor.

The bill prohibits a court from requiring that the obligor purchase life insurance or secure a bond or other security naming the obligee as beneficiary. The bill adds that the obligee may purchase life insurance on the obligor, and that the obligor must cooperate with the application and

³³ *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

³⁴ These exclusions will not apply to formulas in the bill based on the terms “gross income” or “net income” as those terms are separately defined terms.

underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

The bill repeals the classification of marriages being either short-term, moderate-term, or long-term. The bill also repeals their related presumptions regarding which forms of alimony are appropriate to each.

The bill limits the length of an alimony award:

- Bridge-the-gap alimony remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 50 percent of the length of the marriage or 5 years.
- Durational alimony is limited to 50 percent of the length of the marriage.

The bill changes durational alimony to:

- Add that durational alimony ends upon proof of a supportive relationship between the obligee and another person.
- Repeal the requirement to show “exceptional circumstances” in order to modify the duration of the alimony.
- Require a court awarding durational alimony to make written finding that bridge-the-gap, rehabilitative alimony, or a combination of the two, is not appropriate.
- Durational alimony is limited to the lesser of the obligee’s reasonable need for alimony or 25 percent of the difference between the parties’ net incomes.

The term “net income” is defined by the bill as gross income³⁵ minus allowable deductions, which are:

- Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
- Federal insurance contributions or self-employment tax.
- Mandatory union dues.
- Mandatory retirement payments.
- Health insurance payments, excluding payments for coverage of a minor child.
- Court-ordered support for other children which is actually paid.
- Spousal support paid pursuant to a court order from a previous marriage

The bill makes the following additional changes to, and limits on, an alimony award:

- Alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party’s net income. The bill repeals the provision that allows an award of alimony that leaves an obligor with significantly less income upon a showing of exceptional circumstances.
- The court may not use potential Social Security benefits in calculating imputed income.
- For a spouse to claim disability as grounds for not imputing income, the spouse must either be actually qualified for federal Social Security benefits or must show that he or she would qualify as disabled under that program.

³⁵ The bill references the definition of “gross income” in the child support law at s. 61.30(2), F.S. That subsection broadly includes all forms of income, including imputed income, but excluding public support payments.

- The court must consider all alimony payments made prior to the final hearing, whether voluntary or court-ordered, when determining the amount and duration of alimony awarded in the final judgment of dissolution.

Retirement

The bill addresses retirement of an obligor at two stages -- a retired person in a current dissolution of marriage proceeding, and a current obligor seeking modification or termination of an existing alimony award to allow retirement.

As to a pending dissolution of marriage, if a spouse is reasonably retired, that spouse may not be ordered to pay alimony to the other spouse unless:

- The other spouse has not yet reached the minimum age to receive any Social Security retirement benefits;³⁶ and
- The other spouse would, based on the outcome of the dissolution, qualify for the Florida Medicaid medically needy program.³⁷

When considering whether a spouse is reasonably retired in a pending dissolution of marriage case, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both spouses.

As to modification or termination of an existing award of alimony based on retirement, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both parties.
- The impact that a termination or reduction of alimony would have on the obligee, taking into consideration the present assets and income of the obligee.

The factors for determination of a reasonable retirement for purposes of a modification or termination of alimony are similar to those in current case law.³⁸ The case law requirement that alimony set by agreement is more difficult to modify than alimony set by the court is not listed as a consideration.

³⁶ Currently, the minimum age for retirement benefits is 62. <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> (last viewed March 17, 2021).

³⁷ The medically needy program grants eligible persons temporary access to Medicaid. A person otherwise eligible for Medicaid but whose gross income is too high qualifies as medically needy in any month where, deducting their medical expenses from gross income the remainder is less than the Medicaid income threshold. Where qualified, the medically needy person's medical bills for the remainder of that month are paid through Medicaid. Qualification is on a month-to-month basis.

³⁸ *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

The modification statute is further amended to provide that an alimony award terminates when the obligor reaches the Social Security full retirement age,³⁹ except that the court may order durational alimony to extend beyond the Social Security full retirement age if:

- The durational alimony has been paid for a duration of less than 50 percent of the term of the marriage;
- The obligee has not reached the minimum age to qualify for Social Security retirement benefits; and
- The obligee would, as a result of termination of alimony, qualify for the Florida Medicaid medically needy program.

An extension of alimony beyond the age at which the obligor has reached the Social Security full retirement age may not extend the total duration of alimony beyond 50 percent of the term of the marriage.

The bill creates a procedural mechanism to file a petition for modification in anticipation of a future retirement. An obligor may file the petition up to 12 months prior to the anticipated retirement date.

The bill provides that receipt of any Social Security, disability, or retirement received by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill provides that an agreement on alimony may limit modification of the agreement based on a threshold or a limited period of time.

Modification of Termination of Alimony Based on a Supportive Relationship

The bill expands the qualification for the filing of a petition to modify or terminate alimony based on a supportive relationship to include the right to file the petition regarding a past relationship, happening up to 180 days prior to filing the petition.

The bill broadens the description of a supportive relationship to:

- Repeal the requirement to show cohabitation.
- Add to the factors proof that the couple refer to each other as “my partner” or “my fiancé.”
- Add to the factors proof of a longstanding relationship.
- Add to the factors proof that the couple is engaged to be married.

Upon a finding that a supportive relationship exists, the bill adds an additional remedy -- the court may order reimbursement of past alimony paid in any equitable amount.

The bill provides that remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony. An obligee may not seek modification based on the income or assets of the obligor’s new spouse or another person living with the obligor, and the obligor

³⁹ For many years the full retirement age was 65. Currently, it is being slowly raised and will be 67 for persons born in 1960 or later. <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> (last viewed March 17, 2021).

may not seek modification based on the obligor's reliance upon the income and assets of the subsequent spouse or another person living with him or her.

Effective Dates of Changes to Alimony

Changes to alimony law in general, and to the effect of retirement on the initial dissolution of marriage case, are effective July 1, 2021, and apply to any case pending on that date, including pending on appeal.

Changes to alimony law related to modification of an existing award on the grounds of retirement of the obligor, are effective July 1, 2021, and apply to any modification motion pending on that date, including one pending on appeal.

Timesharing with Minor Children

The bill creates a presumption that equal time-sharing is in the best interests of a minor child common to the parties. The parties may jointly waive this presumption.

The change to timesharing is effective for any action filed on or after July 1, 2021.

Bifurcation of Dissolution Case

The bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than 365 days have elapsed since the respondent spouse was served with a summons. Unless the other party shows that irreparable harm will result from granting a final judgment of dissolution of marriage, the court must grant the motion. Once granted, the court will enter a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

Before granting the final dissolution reserving jurisdiction, if the court has not already done so, the court must enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

This part of the bill applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

Rulemaking

The bill repeals s. 61.14(1)(d), F.S. That paragraph gives the Department of Revenue the authority to adopt administrative rules to implement s. 61.14, F.S. The scope of s. 61.14, F.S., is not limited to modification or termination of an alimony award, portions also govern modification and termination of child support. The apparent purpose of the grant of rulemaking authority is to assist in the administrative establishment of child support obligations by the Division of Child Support Enforcement of the Department of Revenue.⁴⁰ Repeal of this paragraph may negatively impact the division's operations.

⁴⁰ See Rule 12E-1.030, F.A.C.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, 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:

Indeterminate.

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: 61.046, 61.08, 61.13, 61.14, and 61.19.

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.



699572

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 519 - 520.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 447 - 448

and insert:

Section 4. Paragraph (b) of subsection (1) of section
61.14, Florida Statutes, is amended, and paragraph (c)



699572

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

13 And the title is amended as follows:

14 Delete lines 61 - 62

15 and insert:

16 providing that an obligor's

By Senator Gruters

23-01257-21

20211922__

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to prioritize certain forms of alimony; authorizing the court to grant permanent alimony under certain circumstances; requiring the court to make certain written findings in its awards of alimony; prohibiting the court from denying or granting an award of alimony solely on the basis of adultery, with an exception; revising factors that the court must consider in determining the proper type and amount of alimony; authorizing a party to whom the court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of securing the life insurance; deleting certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting an award of rehabilitative alimony from exceeding specified timeframes; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain timeframe; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding a specified timeframe; specifying what constitutes the length of a marriage for the purpose of determining durational

23-01257-21

20211922__

alimony; requiring the court to make certain written findings when awarding durational alimony; providing a formula for the calculation of durational alimony; providing that a party who has reached retirement age in accordance with specified provisions may not be ordered to pay alimony; providing an exception; establishing that alimony may not be awarded to a party who has a certain monthly net income; prohibiting social security retirement benefits from being imputed to the obligor, with an exception; requiring an obligee to meet certain requirements if he or she alleges that a physical disability has impaired his or her ability to earn the imputed income; requiring the court to consider certain payments made to the obligee when determining the amount and length of rehabilitative or durational alimony; providing applicability; amending s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; providing applicability; deleting a provision related to the development of a parenting plan; amending s. 61.14, F.S.; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances; specifying a timeframe for the court to consider a supportive relationship between the obligee and another person for purposes of reducing or terminating an award of alimony or ordering reimbursement of alimony payments; revising factors the court may consider when

23-01257-21

20211922__

determining whether a supportive relationship exists or existed between the obligee and another person; deleting the authority for the Department of Revenue to adopt certain rules; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that the income and assets of the obligor's subsequent spouse are irrelevant to an action for modification of alimony; requiring an alimony obligation to terminate upon the obligor reaching full retirement age; providing an exception; authorizing the court to terminate an alimony obligation if the obligor retires at a reasonable age for his or her profession or line of work; requiring the court to consider certain factors in determining whether the obligor's retirement age is reasonable; authorizing an obligor to prospectively file a petition for modification or termination of alimony, effective upon his or her retirement; requiring a court to modify or terminate an alimony award upon retirement of the obligor, with an exception; providing that certain benefits of the obligee constitute a change in circumstance for which an obligor may seek modification of an alimony award; providing that certain agreements on alimony payments are considered expressly modifiable or eligible for termination under certain circumstances; providing applicability; amending s. 61.19, F.S.; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other

23-01257-21

20211922__

substantive issues, under certain circumstances;
providing for temporary orders necessary to protect
the parties and their children, if any; providing that
such temporary orders are effective until all other
issues are adjudicated by the court; providing
applicability; providing an effective date.

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

Section 1. Subsection (8) of section 61.046, Florida
Statutes, is amended to read:

61.046 Definitions.—As used in this chapter, the term:

(8) "Income" means any form of payment to an individual,
regardless of source, including, but not limited to: wages,
salary, commissions and bonuses, compensation as an independent
contractor, worker's compensation, disability benefits, annuity
and retirement benefits, pensions, dividends, interest,
royalties, trusts, and any other payments, made by any person,
private entity, federal or state government, or any unit of
local government. United States Department of Veterans Affairs
disability benefits and reemployment assistance or unemployment
compensation, as defined in chapter 443, are excluded from this
definition of income except for purposes of establishing an
amount of child support.

Section 2. Section 61.08, Florida Statutes, is amended to
read:

61.08 Alimony.—

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

(a) "Alimony" means a court-ordered or voluntary payment of

23-01257-21

20211922__

support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing of an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common.

(b) "Gross income" means gross income as determined in accordance with s. 61.30.

(c) "Net income" means income that is determined by subtracting allowable deductions from gross income. For purposes of this section, allowable deductions include any of the following:

1. Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

2. Federal insurance contributions or self-employment tax.

3. Mandatory union dues.

4. Mandatory retirement payments.

5. Health insurance payments, excluding payments for coverage of a minor child.

6. Court-ordered support for other children which is actually paid.

7. Spousal support paid pursuant to a court order from a previous marriage.

(2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of, ~~which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a permanent in nature or any combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other

23-01257-21

20211922__

146 form of alimony. The court may grant permanent alimony only if
147 the parties enter into an agreement for permanent alimony. In an
148 any award of alimony, the court may order periodic payments, ~~or~~
149 payments in lump sum, or both.

150 (b) The court shall make written findings regarding the
151 basis for awarding a combination of forms of alimony, including
152 the type of alimony and the length of time for which the alimony
153 is awarded. The court may award a combination of forms of
154 alimony only to provide greater economic assistance in order to
155 allow the recipient to achieve rehabilitation.

156 (c) The court may consider the adultery of either spouse
157 and the circumstances thereof in determining the amount of
158 alimony, if any, to be awarded. However, the adultery of a
159 spouse may not be the court's sole basis for denying a request
160 for alimony or awarding alimony, unless the adultery contributed
161 to a depletion of marital assets. In all dissolution actions,
162 the court shall include written findings of fact relative to the
163 factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the
164 an award or denial of alimony.

165 (3)~~(2)~~ In determining whether to award alimony or
166 maintenance, the court shall first make a specific, written
167 factual determination as to whether the other ~~either~~ party has
168 an actual need for alimony or maintenance and whether the other
169 ~~either~~ party has the ability to pay alimony or maintenance. If
170 the court finds that the a party seeking alimony has a need for
171 alimony or maintenance and that the other party has the ability
172 to pay alimony or maintenance, then in determining the proper
173 type and amount of alimony or maintenance under subsections (5),
174 (6), and (7) ~~(5)-(8)~~, the court shall consider all relevant

23-01257-21

20211922__

factors, including, but not limited to:

(a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of either ~~the other~~ party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common.

(h) The tax treatment and consequences to both parties of an ~~any~~ alimony award, ~~including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.~~

(i) All sources of income available to either party,

23-01257-21

20211922__

including income available to either party through investments of any asset held by that party.

(j) Any other factor necessary for to do equity and justice between the parties if such factor is specifically identified in the award with findings of fact justifying the application of such factor.

(4)(3) To the extent necessary to protect an award of alimony, the obligee may ~~court may order any party who is ordered to pay alimony to~~ purchase or maintain a life insurance policy on the obligor's life in an amount adequate to or a bond, ~~or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.~~ If the obligee purchases a life insurance policy, the obligor shall cooperate in the process of procuring the issuance and underwriting of the life insurance policy.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony

23-01257-21

20211922__

terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not be modifiable in amount or duration.

(6) (a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or
2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may not exceed 5 years or the limitations for durational alimony as provided in subsection (7), whichever period of time is shorter.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(7) (a) ~~Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or~~

23-01257-21

20211922__

upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances or upon a finding that a supportive relationship exists or existed between the obligee and another person in accordance with s. 61.14.

~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not exceed 50 percent of the length of the marriage.~~ For purposes of this subsection, the length of a marriage is the period of time beginning on the date of marriage and ending on the date an action for dissolution of marriage is filed.

(b) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(c) The amount of durational alimony is the amount determined to be the obligee's reasonable need or 25 percent of the difference between the parties' net incomes, whichever amount is less.

(8) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

(a) The party seeking alimony has not reached the age to qualify for any social security retirement benefits; and

(b) As a result of the dissolution of marriage, the party seeking alimony would, based on the income and assets available after the dissolution is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III

23-01257-21

20211922__

of chapter 409 and the related rules in effect on March 1, 2020.

(9) (a) Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

(b) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(c) If the obligee alleges that a physical disability has impaired his or her capability to earn the income imputed by the court, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding~~

23-01257-21

20211922__

320 ~~that no other form of alimony is fair and reasonable under the~~
321 ~~circumstances of the parties. An award of permanent alimony~~
322 ~~terminates upon the death of either party or upon the remarriage~~
323 ~~of the party receiving alimony. An award may be modified or~~
324 ~~terminated based upon a substantial change in circumstances or~~
325 ~~upon the existence of a supportive relationship in accordance~~
326 ~~with s. 61.14.~~

327 ~~(9) The award of alimony may not leave the payor with~~
328 ~~significantly less net income than the net income of the~~
329 ~~recipient unless there are written findings of exceptional~~
330 ~~circumstances.~~

331 (10) (a) With respect to any order requiring the payment of
332 alimony entered on or after January 1, 1985, unless ~~the~~
333 ~~provisions of paragraph (c) or paragraph (d)~~ applies ~~apply~~, the
334 court shall direct in the order that the payments of alimony be
335 made through the appropriate depository as provided in s.
336 61.181.

337 (b) With respect to any order requiring the payment of
338 alimony entered before January 1, 1985, upon the subsequent
339 appearance~~7~~ on or after that date~~7~~ of one or both parties before
340 the court having jurisdiction for the purpose of modifying or
341 enforcing the order or in any other proceeding related to the
342 order~~7~~ or upon the application of either party, unless ~~the~~
343 ~~provisions of paragraph (c) or paragraph (d)~~ applies ~~apply~~, the
344 court shall modify the terms of the order as necessary to direct
345 that payments of alimony be made through the appropriate
346 depository as provided in s. 61.181.

347 (c) If there is no minor child, alimony payments need not
348 be directed through the depository.

23-01257-21

20211922__

349 (d)1. If there is a minor child of the parties and both
350 parties so request, the court may order that alimony payments
351 need not be directed through the depository. In this case, the
352 order of support must ~~shall~~ provide, or be deemed to provide,
353 that either party may subsequently apply to the depository to
354 require that payments be made through the depository. The court
355 shall provide a copy of the order to the depository.

356 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
357 either party may subsequently file with the depository an
358 affidavit alleging default or arrearages in payment and stating
359 that the party wishes to initiate participation in the
360 depository program. The party shall provide copies of the
361 affidavit to the court and the other party or parties. Fifteen
362 days after receipt of the affidavit, the depository shall notify
363 all parties that future payments shall be directed to the
364 depository.

365 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
366 rights as the obligee in requesting that payments be made
367 through the depository.

368 (11) The court shall consider any alimony payments made to
369 the obligee after the date of filing of a petition for
370 dissolution of marriage, either voluntarily or pursuant to a
371 court order, in determining the amount and length of an award of
372 rehabilitative or durational alimony.

373 (12) The court shall apply this section to all petitions
374 for dissolution of marriage which have not been adjudicated
375 before July 1, 2021, cases pending on appeal, and to any
376 petitions for dissolution of marriage filed on or after July 1,
377 2021.

23-01257-21

20211922__

Section 3. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise agreed to by the parties, there is a presumption that equal time-sharing is in the best interests of a minor child common to both parties. This subparagraph applies to all actions filed on or after July 1, 2021 ~~There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.~~

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic

23-01257-21

20211922__

407 violence, as defined in s. 741.28 and chapter 775, or meets the
408 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
409 detriment to the child. If the presumption is not rebutted after
410 the convicted parent is advised by the court that the
411 presumption exists, shared parental responsibility, including
412 time-sharing with the child, and decisions made regarding the
413 child, may not be granted to the convicted parent. However, the
414 convicted parent is not relieved of any obligation to provide
415 financial support. If the court determines that shared parental
416 responsibility would be detrimental to the child, it may order
417 sole parental responsibility and make such arrangements for
418 time-sharing as specified in the parenting plan as will best
419 protect the child or abused spouse from further harm. Regardless
420 of whether ~~or not~~ there is a conviction of any offense of
421 domestic violence or child abuse or the existence of an
422 injunction for protection against domestic violence, the court
423 shall consider evidence of domestic violence or child abuse as
424 evidence of detriment to the child.

425 a. In ordering shared parental responsibility, the court
426 may consider the expressed desires of the parents and may grant
427 to one party the ultimate responsibility over specific aspects
428 of the child's welfare or may divide those responsibilities
429 between the parties based on the best interests of the child.
430 Areas of responsibility may include education, health care, and
431 any other responsibilities that the court finds unique to a
432 particular family.

433 b. The court shall order sole parental responsibility for a
434 minor child to one parent, with or without time-sharing with the
435 other parent if it is in the best interests of the minor child.

23-01257-21

20211922__

436 3. Access to records and information pertaining to a minor
437 child, including, but not limited to, medical, dental, and
438 school records, may not be denied to either parent. Full rights
439 under this subparagraph apply to either parent unless a court
440 order specifically revokes these rights, including any
441 restrictions on these rights as provided in a domestic violence
442 injunction. A parent having rights under this subparagraph has
443 the same rights upon request as to form, substance, and manner
444 of access as are available to the other parent of a child,
445 including, without limitation, the right to in-person
446 communication with medical, dental, and education providers.

447 Section 4. Paragraphs (b) and (d) of subsection (1) of
448 section 61.14, Florida Statutes, are amended, and paragraph (c)
449 is added to subsection (11) and subsections (12), (13), and (14)
450 are added to that section, to read:

451 61.14 Enforcement and modification of support, maintenance,
452 or alimony agreements or orders.—

453 (1)

454 (b)1. The court may reduce or terminate an award of alimony
455 or order reimbursement to the obligor for any amount the court
456 determines is equitable upon specific written findings by the
457 court that since the granting of a divorce and the award of
458 alimony, a supportive relationship exists or ~~has~~ existed between
459 the obligee and another ~~a~~ person at any time during the 180 days
460 before the filing of a petition for modification of alimony with
461 ~~whom the obligee resides~~. On the issue of whether alimony should
462 be reduced or terminated under this paragraph, the burden is on
463 the obligor to prove by a preponderance of the evidence that a
464 supportive relationship exists or existed.

23-01257-21

20211922__

2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband," ~~or "my wife,"~~ "my partner," or "my fiancé" or otherwise conducting themselves in a manner that evidences a permanent or longstanding committed and supportive relationship.

b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode.~~

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

23-01257-21

20211922__

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

l. Whether the obligee and the other person are engaged to be married.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of ~~the provisions of this~~ paragraph.

~~(d) The department shall have authority to adopt rules to implement this section.~~

(11)

(c) An obligor's subsequent remarriage or cohabitation does

23-01257-21

20211922__

not constitute a basis for either party to seek a modification of an alimony award. An obligee may not seek modification to increase an award of alimony based on the income and assets of the obligor's subsequent spouse or person with whom the obligor resides, and the obligor may not seek modification to reduce an award of alimony based on the obligor's reliance upon the income and assets of the obligor's subsequent spouse or person with whom the obligor resides.

(12)(a) An alimony award terminates when the obligor reaches full retirement age as determined by the United States Social Security Administration. However, if an obligor reaches full retirement age as determined by the United States Social Security Administration but has not paid durational alimony for a period equal to 50 percent of the length of the marriage, the court may require the obligor to continue to pay durational alimony, not to exceed 50 percent of the length of the marriage, only if the court determines that:

1. The party seeking alimony has not reached the minimum age to qualify for social security retirement benefits; and

2. As a result of the dissolution of marriage or the termination of alimony payments under this paragraph, the party seeking alimony would, based on the income and assets available after the dissolution of marriage is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

(b) If an obligor seeks to retire at an age that is reasonable for his or her profession or line of work, but before he or she reaches full retirement age as determined by the

23-01257-21

20211922__

United States Social Security Administration, the court may terminate an alimony award if it determines that the obligor's retirement is reasonable. In determining whether the obligor's retirement is reasonable, the court shall consider all of the following:

1. The obligor's age and health.
2. The obligor's motivation for retirement.
3. The obligor's profession or line of work and the typical retirement age for that profession or line of work.
4. The obligee's needs and necessities of life and the obligor's needs and necessities of life.
5. The impact that a termination or reduction of alimony would have on the obligee. In determining the impact, the court must consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment of dissolution of marriage.

(c) Up to 12 months before the obligor's anticipated retirement under paragraph (a) or paragraph (b), the obligor may file a petition to modify or terminate the alimony award, effective upon his or her actual retirement date. The court shall modify or terminate the alimony award after the obligor's retirement unless the court makes written findings of fact under paragraph (b) that the obligor's retirement is not reasonable.

(13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification of an alimony award.

(14) (a) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or

23-01257-21

20211922__

581 termination of alimony by virtue of either party reaching a
582 certain age, income, or other threshold, or agreements that
583 establish a limited period of time after which alimony is
584 modifiable, are considered agreements that are expressly
585 modifiable or eligible for termination for purposes of this
586 section once the specified condition is met.

587 (b) The court shall apply this section to any action to
588 modify or terminate an alimony award filed on or after July 1,
589 2021, or any action for which a final order has not been issued
590 or an appeal to a district court of appeal has not been decided
591 before July 1, 2021.

592 Section 5. Section 61.19, Florida Statutes, is amended to
593 read:

594 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay
595 period; separate adjudication of issues.—

596 (1) A ~~No~~ final judgment of dissolution of marriage may not
597 be entered until at least 20 days have elapsed from the date of
598 filing the original petition for dissolution of marriage,~~7~~ but
599 the court, on a showing that injustice would result from this
600 delay, may enter a final judgment of dissolution of marriage at
601 an earlier date.

602 (2) If more than 365 days have elapsed after the date of
603 service of the original petition for dissolution of marriage,
604 absent a showing by either party that irreparable harm will
605 result from granting a final judgment of dissolution of
606 marriage, the court shall, upon request of either party, grant a
607 final judgment of dissolution of marriage with a reservation of
608 jurisdiction to subsequently determine all other substantive
609 issues. Before granting the judgment, the court shall enter

23-01257-21

20211922__

610 temporary orders necessary to protect the parties and their
611 children, which orders remain effective until all other issues
612 can be adjudicated by the court. This subsection applies to all
613 petitions for dissolution of marriage filed on or after July 1,
614 2021.

615 Section 6. This act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21
Meeting Date

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

SB 1922
Bill Number (if applicable)

Topic Alimony RE form

Amendment Barcode (if applicable)

Name JOHN FROMULARO

Job Title FIRST VICE PRESIDENT INVESTMENTS

Address 4 PORTO HNO DR, 2008
Street

Phone 850 982 1910

PENSACOLA FL 32561
City State Zip

Email jfromularo@gmt.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)

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

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

1922

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Deborah F. Schultz, MD

Job Title Medical Doctor

Address 2710 Spring Green Dr.

Phone 813-431-3231

Street

Lutz

Fla

33559

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Family Alimony Reform

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22

Meeting Date

1922

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name L. Williams

Job Title _____

Address 1219 Sterling R

Street

Phone 982-8736

Coral Breeze FL 32563

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

B-22-21

Meeting Date

1922

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Camille FIVERA

Job Title _____

Address 5289 TROVATA AVENUE
Street

Phone 850 686 1452

City

State

Zip

Email camillefivera@gmail.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-22-21

Meeting Date

1922

Bill Number (if applicable)

Topic Dissolution of Marriage

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title _____

Address 625 E. Broadway St

Phone 251-4280

Street

Tallahassee FL 32308

City

State

Zip

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

3/22/21
Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

1922
Bill Number (if applicable)

Topic DISSOLUTION OF MARRIAGE

Amendment Barcode (if applicable)

Name Michelle Klinger Smith, Esq.

Job Title _____

Address 5701 Overseas Hwy.

Phone 305.743.2351

Street Marathon, FL Zip 33050

Email Michelle@floridatecp.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FAMILY LAW SECTION OF THE FLORIDA BAR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021
Meeting Date

SB 1922
Bill Number (if applicable)

Topic Dissolution of Marriage

Amendment Barcode (if applicable)

Name Shannon Novey, Esq.

Job Title Attorney

Address 851 E Park Ave

Phone 850-224-2000

Street

Tallahassee

FL

32301

City

State

Zip

Email ShannonNovey@NoveyLaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Academy of Matrimonial Lawyers (AAML)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 1922

Bill Number (if applicable)

Topic Dissolution of Marriage

Amendment Barcode (if applicable)

Name Lauren Gallo

Job Title Legislative Associate

Address 106 E College Ave S. 1110

Street

Tallahassee

City

FL

State

32301

Zip

Phone (850) 224-1660

Email lngallo@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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.

S-001 (10/14/14)

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

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

March 22, 2021

Meeting Date

SB 1922

Bill Number (if applicable)

Topic Dissolution of Marriage

Amendment Barcode (if applicable)

Name Andrea Tovar

Job Title Consultant, Corcoran Partners

Address 112 E Jefferson Street

Phone 786-357-5533

Street

Tallahassee

FL

32301

City

State

Zip

Email andrea@corcoranpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Academy of Matrimonial Lawyers (AAML)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21
Meeting Date

1922
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Stephanie Fawcett

Job Title Waive & Support

Address 2335 W. Main St Apt 1
Street

Phone _____

Tampa FL 33607
City State Zip

Email _____

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB1922
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name CYNTHIA S. LUS

Job Title _____

Address 6142 REDBERRY DRIVE

Phone 850-259-6023

Street

GULF BREEZE FL 32563

City

State

Zip

Email clous2011@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Mothers, stay at home, wives

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 _____

1922
Bill Number (if applicable) _____

Topic SB 1922 - Family Law Reform

Amendment Barcode (if applicable) _____

Name Marc Johnson

Job Title _____

Address 3207 W. Marion Ave
Street

Phone 813-240-2689

City

State

Zip

Email mjohnson@larsenjohnsonlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Family Fairness Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-21
Meeting Date

SB 1922
Bill Number (if applicable)

Topic ~~SARAH HOLMES~~ SB 1922 - ALIMONY

Amendment Barcode (if applicable)

Name SARAH HOLMES

Job Title MOTHER

Address _____
Street

Phone 850-671-0175

City

State

Zip

Email _____

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)

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: SM 1630

INTRODUCER: Senator Hutson and others

SUBJECT: Second Amendment to the Constitution of the United States

DATE: March 19, 2021

REVISED: _____

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

I. Summary:

SM 1630 expresses the will of the Legislature, on behalf of the State of Florida and its residents, to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of residents to keep and bear arms.

The memorial lays a predicate for this action by recounting the federal and state constitutional rights to bear arms as well as the federal constitutional amendment that limits the federal government's powers and recognizes each state's sovereignty.

II. Present Situation:

Memorials

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.¹

The Second Amendment to the U.S. Constitution

The Constitution of the United States was drafted in 1787, ratified by the people in 1788, and took effect in 1789. However, when the Constitution came into force in 1789, it contained only seven articles, but no individual amendments such as the Bill of Rights.

¹ The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation* (2009) (on file with the Senate Committee on Judiciary).

After the Constitution was drafted, several states quickly ratified the document while other states opposed it because the document failed to reserve undelegated powers to the states. As a compromise, the delegates agreed that the additional and necessary states would ratify the document if amendments were added that protected basic political rights and explicitly placed limitations on federal government actions. This compromise led to the drafting and ratification in 1791 of the first 10 amendments to the Constitution, now known as the Bill of Rights.²

The Second Amendment, which is often referred to as the right to keep and bear arms, states that:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The State Constitution

In a similar manner, the State Constitution contains a provision in the “Declaration of Rights” that is designated as the “Right to bear arms.”³ The guarantee states:

The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

III. Effect of Proposed Changes:

SM 1630 enumerates in the “Whereas” clauses that both the United States Constitution and the State Constitution protect the individual right to keep and bear arms. The memorial also recognizes that the United States Supreme Court has ruled that the Second Amendment protects an individual’s right to keep and bear arms that are “commonly used for lawful purposes.”

The memorial then states that the President of the United States has expressed a clear intention to press Congress to pass legislation that will restrict the lawful acquisition and possession of firearms and ban many firearms that are commonly used for self-defense, hunting, competition, and target shooting. Juxtaposed against the President’s intention to restrict firearms is a statement that the United States Supreme Court has recognized in the Tenth Amendment⁴ the principles of separate sovereignty to prohibit the Federal Government from requiring the State of Florida or its officers to take part in any federal gun-control scheme.

The concluding Whereas clause provides that it is the duty of the State Legislature to exercise all of its lawful authority to protect the right of all state residents to keep and bear arms.

Drawing from the sentiments stated in the Whereas clauses, the memorial then states that it is the consensus of the Legislature that the President’s proposals to restrict the right of law abiding

² History.com, *This Day In History, June 21, U.S. Constitution Ratified*, available at <https://www.history.com/this-day-in-history/u-s-constitution-ratified>.

³ FLA. CONST. art. 1, s. 8(a).

⁴ The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

citizens to keep and bear arms is a violation of the United States Constitution. Accordingly, the Legislature intends to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of residents to keep and bear arms.

The Secretary of State is directed to dispatch copies of the memorial to the President of the United States, the President of the U.S. Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation in Congress.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Hutson

7-01607B-21

20211630__

Senate Memorial

A memorial to the Congress of the United States, expressing the consensus of the Florida Legislature that proposals forthcoming at the federal level to restrict the right to keep and bear arms violate the Constitution of the United States and affirming the intent of the Florida Legislature to do everything in its power to protect the rights of Florida residents under the Second Amendment to the Constitution of the United States and under the Florida Constitution.

WHEREAS, the Second Amendment to the Constitution of the United States and Section 8, Article I of the Florida Constitution protect the individual right to keep and bear arms, and

WHEREAS, the Supreme Court of the United States has ruled that the Second Amendment protects an individual's right to keep and bear arms commonly used for lawful purposes, and

WHEREAS, the President of the United States has made clear his intent to press the United States Congress to pass legislation that would restrict the lawful acquisition and possession of firearms and ban many firearms commonly used for self-defense, hunting, competition, and target shooting, and

WHEREAS, the Supreme Court of the United States has recognized that the principles of separate sovereignty, as embodied in the Tenth Amendment to the Constitution of the United States, prohibit the Federal Government from requiring the State of Florida or its officers to take part in any federal gun-control scheme, and

7-01607B-21

20211630__

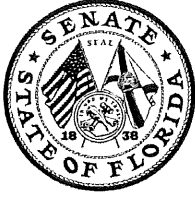
WHEREAS, it is the duty of the State of Florida to exercise all of its lawful authority to protect the right of all Florida residents to keep and bear arms, NOW, THEREFORE,

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

That it is the consensus of the Florida Legislature that the President's proposals to restrict the right to keep and bear arms of law-abiding citizens violates the Constitution of the United States.

BE IT FURTHER RESOLVED that the Florida Legislature, on behalf of the State of Florida and residents of this state, intends to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of Florida residents to keep and bear arms.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Memorial #1630**, relating to Second Amendment to the Constitution of the United States, be placed on the:

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

A handwritten signature in cursive script, reading "Travis J. Hutson".

Senator Travis Hutson
Florida Senate, District 7

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021

Meeting Date

SM 1630

Bill Number (if applicable)

Topic Second Amendment to the Constitution of the United States

Amendment Barcode (if applicable)

Name Kenneth C. Morrow Jr,

Job Title Chairman, Duval County

Address P.O. Box 410045

Street

Melbourne

City

Florida

State

32941

Zip

Phone (904) 414-0644

Email morrow827505@bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Republican Liberty Caucus of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE
APPEARANCE RECORD

3-22-21

Meeting Date

SB-1630

Bill Number (if applicable)

Topic Second Amendment / US Constitution

Amendment Barcode (if applicable)

Name Marion P. Hammer

Job Title _____

Address P.O. Box 1376

Phone 8502229518

Street

Tallahassee

FL

32302

Email mphammer1@aol.c

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NRA and Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 402

INTRODUCER: Judiciary Committee and Senator Rodrigues

SUBJECT: Legal Notices

DATE: March 25, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 402 gives a government agency the option to publish legal notices on a newspaper website instead of a print based newspaper. An agency exercising this option must provide an *additional* notice in a print edition of a local newspaper to inform the general public that additional legal notices may be found on the statewide legal notice website maintained by the Florida Press Association. Any legal notice published in print or through a website must also be published on the statewide legal notice website: www.FloridaPublicNotices.com.

Additionally, the bill expands the types of publications that qualify for the posting of legal notices. Currently, a newspaper must, among other requirements, be “for sale to the general public” and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in smaller publications that are free to the public.

The bill amends several sections of the Florida Statutes to conform the ability of a government agency to post legal advertisements and notices on the Internet.

The bill is effective July 1, 2021.

II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be “open and noticed to the public.”¹ Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”² and “must be of such nature as reasonably to convey the required information.”³

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.⁴ Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.⁵ Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;⁶ and
- Has been in existence for at least 1 year at the time the notice is published.⁷

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted

¹ Art. I, s. 24(b), Fla. Const.

² *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

³ *Id.*

⁴ “Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

⁵ “Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served.” *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual’s “usual place of abode.” Section 48.031, F.S.

⁶ Section 50.011, F.S.

⁷ Section 50.031, F.S.

at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.⁸

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.⁹ This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.¹⁰ This provision of Florida law is similar to statewide legal notice websites established in Alabama,¹¹ Colorado,¹² Illinois,¹³ Louisiana,¹⁴ Maine,¹⁵ Massachusetts,¹⁶ North Dakota,¹⁷ Ohio,¹⁸ Tennessee,¹⁹ Utah,²⁰ Virginia,²¹ and Wisconsin.²² The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

Newspaper Website

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.²³ The newspaper's website must contain a search function to facilitate searching for legal notices.²⁴ Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.²⁵

Fees

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that

⁸ Section 50.021, F.S.

⁹ Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at <https://www.floridapublicnotices.com/>.

¹⁰ *Id.*

¹¹ Ala. Code § 6-8-62.

¹² Colo. Rev. Stat. Ann. § 24-70-103.

¹³ 715 Ill. Comp. Stat. Ann. 5/2.1.

¹⁴ La. Stat. Ann. § 43:111E.

¹⁵ Me. Rev. Stat. tit. 1, § 603(2).

¹⁶ Mass. Gen. Laws Ann. ch. 4, § 13.

¹⁷ N.D. Cent. Code Ann. § 46-05-09.

¹⁸ Ohio Rev. Code Ann. § 125.182(a).

¹⁹ Tenn. Code Ann. § 1-3-120(a)(2).

²⁰ Utah Code Ann. § 45-1-101(2)(b).

²¹ Va. Code Ann. § 8.01-324(g).

²² Wis. Stat. Ann. § 985.01(7).

²³ Section 50.021(2), F.S.

²⁴ *Id.*

²⁵ *Id.*

notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.²⁶

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges \$200 for a “full run” of a notice of a foreclosure action.²⁷ If the notice needs to be up for more than 2 days, the charge increases to \$400. Additionally, the per-line cost above the included 165 line limit is \$6.45.

Proof of Publication

If an affidavit of proof of publication is required for a legal notice, the affidavit must comply with certain standards. Specifically, the affidavit must:

- Be printed upon white paper;
- Be 8.5 inches in width and at least 5.5 inches in length; and
- Contain a margin of at least 2.5 inches at the right side of the affidavit form with a clipping of a true copy of the public notice or legal advertisement which was executed.²⁸

The affidavit may be provided electronically so long as it complies with the electronic notarization requirements.²⁹

If the proof of publication is in a county having a population in excess of 450,000 according to the latest decennial census, the publication may charge a maximum fee of \$2 for the preparation and execution of each of proof of publication.³⁰

III. Effect of Proposed Changes:

Legal Notice Website

The bill provides an option for government agencies required by law to publish legal notices to publish those notices on a newspaper’s website in lieu of a paper based publication. Legal notice may be satisfied upon the legal notice being posted in a newspaper of general circulation. To qualify as a newspaper of general circulation, the bill requires the newspaper to be:

- Printed and published at least once a week;
- Contain at least 25 percent of its words in the English language; and
- Be available to the public generally for the publication of notices and customarily contain information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

²⁶ Section 50.061, F.S.

²⁷ For the Tampa Bay Times, a “full run” includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs \$135 for Pasco County, and \$155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates*, <https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf> (Last visited January 21, 2021)

²⁸ Section 50.041(2), F.S.

²⁹ Section 117.021, F.S. contains additional requirements for documents notarized electronically.

³⁰ Section 50.041(3), F.S.

Under current law, a newspaper must additionally be “for sale to the general public” and entered as a periodical matter at the local post office in the county where the newspaper is published. By removing these two requirements, the bill allows for legal notices to be published using non-subscription based publications and publications that may not be recognized as periodical matter by the local post office.

If a government agency exercises the option to publish legal notices on a newspaper website, the agency must provide an *additional* notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.³¹ Furthermore, a government agency must determine that Internet publication of any notice would not unreasonably restrict public access to the legal notice.

The bill allows for a newspaper to charge for publication of a legal notice on the newspaper’s website. However, the newspaper may not charge a higher rate for publication than the amount that would be authorized if the legal notice were publicized in print.³²

The bill revises the additional fee that may be charged by a newspaper if a proof of publication is required for public notices or legal advertisements. Currently, a \$2 charge may be levied for a proof of publication executed in a county with a population in excess of 450,000. The bill allows the maximum \$2 charge to be levied for any proof of publication regardless of the population of the county.

The bill provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website. Under current law, an advertisement for the sale or disposition of the contents of a storage unit based on a facility owner’s lien must be published for a period of 2 weeks in a newspaper of general circulation in the area where the self-service storage facility is located. The bill allows for these advertisement to be published on a public website that customarily conducts personal property auctions.

The bill revises several sections of the Florida Statutes to conform to the option to publish certain notices in a newspaper website. Specifically, the bill revises the following sections of the Florida Statutes to provide an option to publish a notice in a newspaper website:

- Section 11.02, F.S., providing notice of special or location legislation or any relief acts pursuant to s. 50.0211(5), F.S.
- Section 45.031, F.S., to provide that a publication of a sale in a judicial sales procedure may be published by Internet publication pursuant to s. 50.0211(5), F.S., if it is published for at least 2 consecutive weeks.
- Section 120.81, F.S., to provide that a notice relating to the rules regarding an educational unit, such as a district school board, may be issued by Internet publication pursuant to s. 50.0211(5).

³¹ See www.FloridaPublicNotices.com

³² See “Fees” subsection under “Present Situation” of this analysis for further discussion of print based fees.

- Section 121.055, F.S., to provide that a Notice of Intent to designate certain positions as “Senior Management Services Class” under the Florida Retirement System may be publicized through an Internet publication pursuant to s. 50.0211(5), F.S. The notice must be published for at least 2 consecutive weeks.
- Section 125.66, F.S., to provide that the board of county commissioners may issue a notice of intent to consider an ordinance by publication as specified in chapter 50, F.S., as amended by the bill.
- Section 162.12, F.S., to provide that a code enforcement board, or local government, may issue a notice by Internet publication by publishing the notice for 4 consecutive weeks on the newspaper’s website and the statewide legal notice website as provided in s. 50.0211(5), F.S., as amended by the bill.
- Section 189.015, F.S., to provide that the governing body of each special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50, F.S., as revised by the bill.
- Section 190.005, F.S., to provide that a notice of a hearing for the establishment of a community development district with the size of 2,500 acres or more shall published for 4 consecutive weeks on a newspaper’s website and the statewide legal notice website if published in print.
- Section 190.046, F.S., to provide that a notice of intent to amend an ordinance establishing a community development district must be published as provided in chapter 50, F.S., as revised by the bill.
- Section 194.037, F.S., to provide that the findings of the Tax Impact of Value Adjustment Board be published as provided in chapter 50, F.S., as revised by the bill.
- Section 197.402, F.S., provides that advertisements of real or personal property with delinquent taxes are to be advertised as provided in chapter 50, F.S., as revised by the bill.
- Section 200.065, F.S., to provide that the assessment conducted by the property appraiser shall be published as provided in chapter 50, F.S. Additionally, the bill revises this section to allow notices for certain millage increases that may lead to tax increases, such as ad-valorem taxes, to be advertised pursuant to chapter 50, F.S., as revised by the bill.
- Section 849.38, F.S., to provide that when certain property seized by the sheriff’s office has an appraisal value of \$1,000 or less, the notice must be posted for at least 2 consecutive weeks on a newspaper’s website and the statewide legal notice website in accordance with s. 50.0211(5), F.S.
- Section 932.704, F.S., to provide that the notice required for a forfeiture complaint must be published for 2 consecutive weeks on a newspaper’s website and the statewide legal notice website in accordance with s. 50.0211(5), F.S., or if published in print, once each week for 2 consecutive weeks.

The bill has additional requirement for newspapers that publish legal notices. Specifically, the newspapers are required to include a disclaimer stating that the listing of legal notices may not include all legal notices affecting the area of distribution of the newspaper and that the additional legal notices may be accessed on the statewide legal notice website. Additionally, any notice issued through the newspaper’s printed edition or website is required to also be published on the statewide legal notice website maintained by the Florida Press Association.

The bill requires the Florida Press Association to consult with the Black Press Association of Florida to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the internet.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice “to apprise interested parties of the pendency of” an action that may affect life, liberty, or property.³³ For example, notice is required for termination of parent rights proceedings,³⁴ certain local county initiatives,³⁵ and civil judgements based on litigation.³⁶ On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be

³³ 339 U.S. 306, 314 (1950).

³⁴ *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice) .

³⁵ *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that “constructive notice by publication is appropriate in bond validation proceedings”).

³⁶ “To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance.” *Pennoyer v. Neff*, 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.³⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will likely reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice.

C. Government Sector Impact:

The bill may increase spending for certain government agencies. The bill requires an agency to pay for both a website publication *and* a weekly print edition newspaper notice when publishing a legal notice on a newspaper's website. Currently, a government agency only has to pay for the print edition. However, the expansion of the types of publications that may publish a legal notice may encourage market participation and lead to a decrease in overall fees.

VI. Technical Deficiencies:

VII. Related Issues:

The bill provides that the fee for an online publication of a legal notice cannot exceed the fee charged for a print edition of that notice. The Legislature may wish to provide an alternative fee structure. The current fee structure is based on the size of the notice and can be more costly depending on how many copies of the newspaper are printed and distributed. This is meant to encourage pricing based on how much space is taken up in the print edition newspaper as well as how large that newspaper's audience is. A website publication does not have these same logistical structures to base a fee on the statutory mechanism.

Several sections of the bill permit publication pursuant to s. 50.0211(5) or as otherwise provided under chapter 50, F.S. Other sections of the bill, such as section 14, include language such as "on a newspaper's website and the statewide legal notice website as provided in s. 50.0211(5)." It may be beneficial for the Legislature to provide consistent language in this regard.

³⁷ For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail "provide[s] an 'efficient and inexpensive means of communication' upon which prudent men will ordinarily rely in the conduct of important affairs").

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.041, 50.051, 83.806, 11.02, 45.031, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09 and 932.704.

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

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

CS by Judiciary on March 22, 2021:

The committee substitute:

- Allows a government agency to publish legal notices on a newspaper website in lieu of a print based publication.
- Allows legal notices to be published using a non-subscription based publisher.
- Removes the requirement that the Supreme Court establish a legal notice website and a restitution, fines, and fees website.
- Provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

B. Amendments:

None.

By Senator Rodrigues

27-00581-21

2021402__

A bill to be entitled

An act relating to the Public Notice and Voting Rights Restoration Database; authorizing legal notifications in certain cases to be published on a website established by the Supreme Court, in lieu of newspaper publication; providing that such legal notifications be posted to the website following payment of a fee; providing limitations for, and for the adjustment of, such fees; specifying that website publication constitutes proof of publication, unless otherwise determined by a court; authorizing a county to publish such legal notifications in a newspaper, subject to certain limitations; providing requirements and limitations regarding the operation of the website; providing that certain revenue be used toward certain data collection regarding nonviolent felons and the publication of such data on a website; providing requirements and limitations regarding the operation of the website containing such data; providing for the deposit of any remaining excess revenue into the State Courts Revenue Trust Fund; specifying that a certain portion of remaining excess revenue may be pledged toward operating costs of the website containing legal notifications; providing an effective date.

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

Section 1. Public Notice and Voting Rights Restoration Database.—

27-00581-21

2021402__

(1) Notwithstanding any other law, in any civil or criminal case in which a legal notification must be made by publication in a newspaper, the notification may be published on a website established by the Supreme Court in lieu of newspaper publication. The notification must be posted to the website following the payment of a fee established by the Supreme Court. The fee charged may vary based on the number of words contained in the notification but may not exceed \$500 per notification. The maximum fee may be adjusted by the Supreme Court, upon approval by the Legislative Budget Commission. Actual access by the court of a notification on the Internet constitutes proof of publication for all purposes, unless the court with jurisdiction over the particular matter determines that access to the website was not sufficiently available during the notice period to constitute sufficient notice. A county may publish the legal notification in at least one newspaper of general circulation in such county in lieu of website publication; however, the fee charged by the newspaper for publication may not exceed the website publication fee established by the Supreme Court.

(2) The website established pursuant to subsection (1) must be operated by the Supreme Court, by the Office of the State Courts Administrator, or by a contractor selected by the court. The website operating costs may not exceed 15 percent of revenue from fees for legal notifications published on the website. The Office of the State Courts Administrator must publicize the existence of the website and its web address on at least a monthly basis through publishing a notice in at least one newspaper of general circulation in each county of the state, directing each county to post a clear written notice at the

27-00581-21

2021402__

entrance of each county courthouse and each annex containing court facilities, and directing each clerk of court and judicial circuit to include a notice on their official website.

(3) All revenue from fees collected pursuant to subsection (1) which is in excess of the operating costs for the legal notification website must be used toward aggregating and publishing data regarding restitution, fines and fees owed by nonviolent felons to victims and the judicial branch, and the operation of a website that displays such data. Such website must be operated by the Supreme Court, by the Office of the State Courts Administrator, or by a contractor selected by the court; however, the operating costs of the website may not exceed 50 percent of excess revenue remaining after any deductions made pursuant to subsection (2).

(4) Any excess revenue remaining after deducting operating costs for the website established in subsection (3) shall be deposited into the State Courts Revenue Trust Fund. Fifteen percent of such excess revenue from fees collected in any fiscal year may be pledged for the operation of the website established in subsection (1).

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/21

Meeting Date

402

Bill Number (if applicable)

553328

Amendment Barcode (if applicable)

Topic Public Notice

Name Ron Book

Job Title _____

Address 104 W. Jefferson St

Street

Tallahassee FL 32301

City

State

Zip

Phone (850) 224-3427

Email Ron@rbookcpa.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Gannett

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB402

Bill Number (if applicable)

553328

Amendment Barcode (if applicable)

Topic Public Notice

Name Jeff Kottkamp

Job Title _____

Address _____

Street

Tallahassee

Florida

City

State

Zip

Phone _____

Email JeffKottkamp@Gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Lawyer Media

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021

Meeting Date

402

Bill Number (if applicable)

553328

Amendment Barcode (if applicable)

Topic Public Notice and Voting Rights Restoration Database

Name Bryan Boukari

Job Title Publisher/Attorney

Address 14804 Main Street

Street

Alachua

City

Florida

State

32615

Zip

Phone (386) 462-3355

Email Bryan@BoukariLaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Alachua County Today Newspaper

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

SB 402

Bill Number (if applicable)

Topic Public Notice

Amendment Barcode (if applicable)

Name Douglas Ray

Job Title Editor, Gainesville Sun, Ocala Star-Banner

Address 2700 SW 13th St

Phone 352-538-3087

Street

Gainesville

FL

32608

City

State

Zip

Email doug.ray@gainesville.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Gainesville Sun, Ocala Star-Banner,

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/2021

Meeting Date

SB 402

Bill Number (if applicable)

Topic Publication of Public Notices

Amendment Barcode (if applicable)

Name Jeremy OBrien

Job Title

Address 1700 SW 16th Ct

Street

Gainesville

FL

32608

City

State

Zip

Phone

Email

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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 402

Bill Number (if applicable)

Topic Public Notice and Voting Rights Restoration

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P. O. Box 10788

Phone 850-570-9560

Street

Tallahassee

FL

32303

Email carrie.boyd@splcenter.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

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)

March 22, 2021
Meeting Date

SB 402
Bill Number (if applicable)

Topic publication of public notices

Amendment Barcode (if applicable)

Name Raymond Wise

Job Title Paralegal

Address 1700 SW 16th Ct L-2
Street

Phone (352) 284 1432

Gainesville FL 32608
City State Zip

Email wise.raymond.lee@gmail.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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 22, ~~2021~~ 2021

Meeting Date

SB 402

Bill Number (if applicable)

Topic Publication of Public Notices

Amendment Barcode (if applicable)

Name Raymond Wise

Job Title Paralegal

Address 1700 SW 16th CT L-2

Street

Gainesville, FL

City

State

32608

Zip

Phone (352) 284-1432

Email wise.raymond.lee@
gmail.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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021

Meeting Date

402

Bill Number (if applicable)

Topic Public Notice and Voting Rights Restoration Database

Amendment Barcode (if applicable)

Name Bryan Boukari

Job Title Publisher/Attorney

Address 14804 Main Street

Phone (386) 462-3355

Street

Alachua

Florida

32615

City

State

Zip

Email Bryan@BoukariLaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Alachua County Today Newspaper

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

402

~~1402~~

Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Glen Nickerson

Job Title Publisher

Address 23170 Harborview Road

Phone 941-205-6400

Street

Fort Charlotte

FL

33980

City

State

Zip

Email glen.nickerson@you-sun.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing The Daily Sun & Venice Gondolier

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-22-21

Meeting Date

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

SB 402

Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Emily Walsh

Job Title Publisher & Chief Digital Officer

Address 1970 Main Street

Phone 941-356-0290

Street

Sarasota

FL

34236

City

State

Zip

Email ewalsh@yourobserver.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Observer Media Group & Florida Press Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21
Meeting Date

402
Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Emerald Greene

Job Title Publisher/owner

Address PO Drawer 772

Phone 850-464-0865

Madison FL 32341
City State Zip

Email emerald@greene
publishing.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Greene Publishing & Florida Press Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 22, 2024
Meeting Date

402
Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Jamie Wachter

Job Title Editor

Address 218 SW Dunlap Glen
Street

Phone 601-227-8511

Lake City
City

FL
State

32024
Zip

Email jwachter@lakecityreporter.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Lake City Reporter / Florida Press Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-22-

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

SB 402

Meeting Date

Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Jon Cantrell

Job Title Publisher

Address 3513 HWY 17

Phone 904-710-8181

Street

Fleming Island FL 32003

Email jon@opcf1a.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Clay Today Newspaper

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)

402

Meeting Date _____

Bill Number (if applicable) _____

Topic Legal Notices

Strata

Amendment Barcode (if applicable) _____

Name Sam Morley

Job Title Gen. Counsel

Address 306 Ballyn

Phone 850 212 8395

Street Trail

City FL State FL Zip 32302

Email smorley@flbar.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Press Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB 402
Bill Number (if applicable)

Topic SB 402

Amendment Barcode (if applicable)

Name MATT NEWBY

Job Title PUBLISHER - NORTH LAKE OUTPOST

Address 131 N. CENTRAL AVENUE
Street

Phone 352-669-2430

UMATILLA, FL 32784
City State Zip

Email NORTH LAKE OUTPOST@GOLG

Speaking: ☐ For ☒ Against ☐ Information

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

Representing OUTPOST PUBLISHING

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21
Meeting Date

SB 402
Bill Number (if applicable)

Topic Public Notice Bill

Amendment Barcode (if applicable)

Name Jim Fogler

Job Title President

Address 336 E College Ave - Suite 304 Phone _____
Street

Tallahassee FL 32301 Email _____
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Florida Press Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-22-21

Meeting Date

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

SB 402

Bill Number (if applicable)

Topic Publ. Notices

Amendment Barcode (if applicable)

Name Tim Thompson

Job Title Publisher

Address 501 W 11th

Phone 205-454-1484

Street

Panama City

FL

State

32401

Zip

Email tthompson1@
gannett.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Panama City News Herald

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)

SP402

Meeting Date _____

Bill Number (if applicable) _____

Topic FLORIDA PUBLIC NOTICES & VOTER RESTORATION Amendment Barcode (if applicable) _____

Name TODD NEVES

Job Title PRESIDENT - NEVES PUBLISHING

Address 1609 LISKEY AVE Phone 850 832 8633

Street

PANAMA CITY FL

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing NEVES MEDIA PUBLISHING

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/12/21
Meeting Date

SB402
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Michael Leonard

Job Title Publisher, Palatka Daily News

Address 1825 St. Johns Ave

Phone _____

Street

City

Palatka

State

FL

Zip

32177

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Palatka Daily News / Ft. La. Press

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3.22.2021

Meeting Date

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

SB 402

Bill Number (if applicable)

Topic SB402

Amendment Barcode (if applicable)

Name Foy MALOY

Job Title PUBLISHER

Address 1235 S. 10th STREET

Street

Phone 904 261. 3696

FERNANDINA BEACH

City

State

FL

32034

Zip

Email FMALOY@FBNEWSLEADER.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing NEWS LEADER & NASSEN COUNTY RECORD

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

MARCH 22, 2021

Meeting Date

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

SB 402

Bill Number (if applicable)

Topic PUBLIC NOTICES

Amendment Barcode (if applicable)

Name WM HATFIELD

Job Title TALLAHASSEE DEMOCRAT EXECUTIVE EDITOR

Address 4743 STONEY TRACE

Phone 850-228-6463

Street

TALLAHASSEE

City

FL

State

32309

Zip

Email WHATFIELD@TALLAHASSEE.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing TALLAHASSEE DEMOCRAT

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21
Meeting Date

SB 402
Bill Number (if applicable)

Topic Public Notice & Voter Restoration

Amendment Barcode (if applicable)

Name Nicole P. Barefield

Job Title Publisher

Address 1364 N Railroad Ave.
Street

Phone 850-832-9069

Chipley FL 32428
City State Zip

Email nbarefield@
newsmediapublishing.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing NewsMedia Publishing - Washington County News, Holmes County Times
Port St. Joe Star, Apalachicola Times Advertiser

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

402

Bill Number (if applicable)

Topic

Newspapers / Public Notice

Amendment Barcode (if applicable)

Name

Sandi Kemp

Job Title

Publisher

Address

7502 Harvest Village Ct.

Phone

850 525 5785

Street

Navarre

FL

32566

Email

skemp@navarrepress.com

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

The public's right to know. Transparency.

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-22-2021

Meeting Date

SB 402

Bill Number (if applicable)

Topic Public Notice & Voting Rights Restoration

Amendment Barcode (if applicable)

Name Karen Tower

Job Title Exe Dir Fla Press Foundation

Address 336 E College Ave,

Street

Phone 321-283-5345

Tallahassee

FL

32301

City

State

Zip

Email ktower@flpress.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Press Foundation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21
Meeting Date

SB 402
Bill Number (if applicable)

Topic Public Notice + Voting Rights

Amendment Barcode (if applicable)

Name Lauren Gallo

Job Title Legislative Associate

Address 1070 E College Ave
Street

Phone 850-224-1660

Tallahassee FL 32307
City State Zip

Email lngallogallo@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/2021
Meeting Date

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

SB 402
Bill Number (if applicable)

Topic PUBLIC NOTICES

Amendment Barcode (if applicable)

Name MIKE SANDLER

Job Title RETIRED

Address 1905 WILLIAMS CREEK DR
Street

Phone 850 686 6643

NAVARRE
City

FL
State

32566
Zip

Email MJSANDLER@BELLSOUTH
NET

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 402

Bill Number (if applicable)

Topic Public Notice and Voting Rights Restoration Database

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 1380

INTRODUCER: Senator Rodrigues

SUBJECT: Relief from Burdens on Real Property Rights

DATE: March 18, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Davis	Cibula	JU	Pre-meeting
2. _____	_____	CA	_____
3. _____	_____	RC	_____

I. Summary:

SB 1380 amends three definitions in statutes designed to protect the private property rights of landowners. Two definitions are amended in the Bert J. Harris, Jr., Private Property Rights Protection Act. The definition of an “action of a governmental entity” is revised to include government actions that affect real property including the adoption or enforcement of “any ordinance, resolution regulation, rule, or policy.” The term “real property” is amended to include any legal interest in land, including surface, subsurface, and mineral estates and any other interest held by a property owner in the land.

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

The act takes effect July 1, 2021.

II. Present Situation:

Private Property Guarantees in the Federal and State Constitution

Both the Federal Constitution and State Constitution guarantee that a person’s private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall “be taken for public use without just compensation.” Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.¹

¹ FLA. CONST. art. X, s. 6.

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

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Protection Act” in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- “As-applied” challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not based on temporary impacts.²

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights *without* amounting to a taking³ under either the State Constitution or the United States Constitution. The Legislature declared that there is “an important state interest in protecting the interests of private property owners from those inordinate burdens.” Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.⁴

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.⁵

Before a property owner files an action for compensation under the Bert Harris Act, he or she must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.^{6,7} If other parties are involved, the

² W. Thomas Hawkins, *Land Use Law in Florida*, 17-3 (Routledge, forthcoming June 2021).

³ A “taking” is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner’s rights. BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ Section 70.001(1), F.S.

⁵ Section 70.001(3)(e)1. The definition further explains in s. 70.001(3)(e)2, what the terms do not include with regard to other impacts.

⁶ Section 70.001(4)(a), F.S.

⁷ The appraisal should contain valuations of the property both before and after the government’s restriction was imposed. This will enable the government to adequately evaluate the property owner’s potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, The Florida Bar, 2018 Florida Real Property Litigation (2018),

governmental entity must notify them, including all owners of real property that is contiguous to the owner's property.⁸

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.⁹

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.¹⁰ A cause of action may not be filed more than 1 year after a law or regulation is "first applied" by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.¹¹

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner's property. If the court determines that an inordinate burden was imposed, the court must also determine the percentage of responsibility each governmental entity must bear.¹² The circuit court must impanel a jury to determine the amount of compensation.¹³

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.¹⁴

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem>.

⁸ Section 70.001(4)(b), F.S.

⁹ Section 70.001(4)(c), F.S.

¹⁰ Section 70.001(5)(b), F.S.

¹¹ Section 70.001(11), F.S.

¹² Section 70.001(6)(a), F.S.

¹³ Section 70.001(6)(b), F.S.

¹⁴ Section 70.001(6)(c)3., F.S.

- The property owner prevails; and
- The court determines that the government's settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.¹⁵

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.¹⁶

Governmental Exactions

In response to a 2013 U.S. Supreme Court case, *Koontz v. St. John's River Water Management District*,¹⁷ the Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a "prohibited exaction."¹⁸ Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner's proposed use of real property that does not have "an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity" is seeking to avoid, minimize, or mitigate.¹⁹

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.²⁰

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.²¹

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid.

¹⁵ Section 70.001(6)(c)1., F.S.

¹⁶ Section 70.001(6)(c)2., F.S.

¹⁷ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

¹⁸ Chapter 2015-142, s. 2, Laws of Fla.

¹⁹ Section 70.45(1)(c), F.S.

²⁰ Section 70.45(2), F.S.

²¹ Section 70.45(3), F.S.

The burden of proving damages that result from the prohibited exaction rests upon the property owner.²²

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.²³

Florida Land Use and Environmental Dispute Resolution Act

When the Legislature adopted the Bert Harris Act in 1995, it also created the Florida Land Use and Environmental Dispute Resolution Act (“FLUEDRA”) in the same chapter. FLUEDRA is codified in s. 70.51, F.S., and is designed to encourage dispute resolution between real property²⁴ owners and government entities using a special magistrate in an informal hearing.²⁵ FLUEDRA provides an informal mechanism for a property owner to challenge a governmental action infringing on his or her property without filing a lawsuit.

The FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.²⁶ Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her real property may, within 30 days after receiving the notice or order, file a request for relief with the government that issued the notice or order.²⁷ The government must forward the request to a special magistrate,²⁸ who must hold a hearing within 45 days after receiving the request for relief.²⁹ The special magistrate’s primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts. The hearing is open to the public and does not require the use of an attorney.³⁰ In this role, the special magistrate acts as a “facilitator or mediator.”³¹

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner’s real property, based on a list of statutory guidelines.³² Within 14 days after the hearing’s conclusion, the special magistrate must submit a written recommendation to the parties.³³ If the special magistrate finds that the government action does not unreasonably or unfairly burden the use of the property, the

²² Section 70.45(4), F.S.

²³ Section 70.45(5), F.S.

²⁴ “Real property” or “land” means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest. S. 70.51(2)(g), F.S.

²⁵ See s. 70.51, F.S.

²⁶ Section 70.51(24), F.S.

²⁷ Section 70.51(3) and (4), F.S.

²⁸ A “special magistrate” is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. Section 70.51(2)(c) and (4), F.S.

²⁹ Section 70.51(15)(a), F.S.

³⁰ See s. 70.51(17)(a), F.S.

³¹ *Id.*

³² Section 70.51(17)(b) and (18), F.S.

³³ Section 70.51(19), F.S.

property owner may still file suit or pursue other remedies.³⁴ If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend one or more alternatives that allow for reduced government restraints on the property.³⁵

The government must respond within 45 days after receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.³⁶ If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.³⁷

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to support modification, variances, or special exceptions to the property.³⁸ The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.³⁹

III. Effect of Proposed Changes:

Definitions in the Bert Harris Act - Section 1

The bill revises the definition of an "action of a governmental entity" in the Bert Harris Act to include government actions that affect real property including the adoption or enforcement of "any ordinance, resolution, regulation, rule, or policy."

The term "real property" is amended to include any legal interest in land, including surface, subsurface, and mineral estates and any other interest held by a property owner in the land. In a 1969 Florida Supreme Court case, *Dickinson v. Davis*,⁴⁰ the Court stated that land can "be divided horizontally as well as vertically, so that one person may own the surface and another the minerals underground." Accordingly, the Court long ago recognized that separate legal rights to surface and subsurface holdings exist.

The broadening of the definition of real property might be perceived as an expansion of the Harris Act that would allow more successful causes of action than exist under current law. Under existing law damages are measured by the change in the market value of land. Under this proposal, a claimant might argue that the market value of his or her mineral estate has declined and he or she is therefore entitled to damages against a governmental entity. In contrast, some might argue that the revised definition is only a clarification, not an expansion, of current law, such that there is no change in the existing law.

³⁴ Section 70.51(19)(a), F.S.

³⁵ Section 70.51(19)(b), F.S.

³⁶ Section 70.51(21), F.S.

³⁷ Section 70.51(22), F.S.

³⁸ Section 70.51(25), F.S.

³⁹ Section 70.51(23), F.S.

⁴⁰ *Dickinson v. Davis*, 224 So. 2d 262 (Fla. 1969). The case dealt with separate tax assessments for mineral, oil, gas, and other subsurface rights.

Definitions in the Florida Land Use and Environmental Dispute Resolution Act – Section 2

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act. Similarly and as discussed above, this change might make additional disputes qualified for resolution before a special magistrate.

Reenactment of a Term – Section 3

As a technical matter, s. 70.45(1)(e), F.S., is reenacted to incorporate the amendment made to s. 70.001, F.S.

The bill takes effect July 1, 2021.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

If the revision of definitions in SB 1380 provides an opportunity for more lawsuits under the Bert Harris Act, local governments might expend more funds addressing these claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001 and 70.51. This bill reenacts section 70.45, Florida Statutes.

IX. Additional Information:

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

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

None.

B. **Amendments:**

None.

By Senator Rodrigues

27-01325-21

20211380__

A bill to be entitled

An act relating to relief from burdens on real property rights; amending s. 70.001, F.S.; revising the definitions of the terms "action of a governmental entity" and "real property"; amending s. 70.51, F.S.; revising the definition of the term "land"; reenacting s. 70.45(1)(e), F.S., relating to governmental exactions, to incorporate the amendment made to s. 70.001, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (d) and (g) of subsection (3) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including action on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.

(g) The term "real property" means land and any legal interest in land, including surface, subsurface, and mineral estates; includes any appurtenances and improvements to the land; and, including any other relevant interest held by a property owner in the land ~~real property in which the property owner has a relevant interest.~~ The term includes only the land that is ~~parcels that are~~ the subject of and directly impacted by

27-01325-21

20211380__

the action of a governmental entity.

Section 2. Paragraph (g) of subsection (2) of section 70.51, Florida Statutes, is amended to read:

70.51 Land use and environmental dispute resolution.—

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

(g) "Land" or "real property" has the same meaning as in s. 70.001(3) (g) ~~means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest.~~

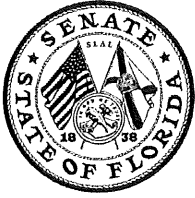
Section 3. For the purpose of incorporating the amendment made by this act to section 70.001, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 70.45, Florida Statutes, is reenacted to read:

70.45 Governmental exactions.—

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

(e) "Real property" has the same meaning as provided in s. 70.001(3) (g) .

Section 4. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEES:

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

SENATOR RAY WESLEY RODRIGUES
27th District

March 9, 2021

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

RE: SB 1380 – Relief from Burdens on Real Property Rights

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 1380, relating to relief from burdens on real property rights, on the next committee agenda.

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

Sincerely,

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

Ray Rodrigues
Senate District 27

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

REPLY TO:

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

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
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 534

INTRODUCER: Senators Gibson and Thurston

SUBJECT: Insurance Representative Examination Requirements

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Favorable
2.	Davis	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 534 amends s. 626.221, F.S., to add a category of persons to the list of individuals who are not required to take the examination to become an all-lines insurance adjuster—namely a person certified as an Accredited Insurance Claims Specialist (AICS) from Encore Claim Services (Encore).

II. Present Situation:

An adjuster is “an individual employed by a property/casualty insurer to evaluate losses and settle policyholder claims.”¹ An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”² An all-lines adjuster “is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.”³ Subject to certain exceptions, a public adjuster is someone who is paid by an insured to prepare and file a claim for the insured against his or her insurer.⁴

Among other requirements, an applicant must pass an examination to obtain an adjuster’s license; however, the examination requirement is waived if the applicant has attained certain professional designations that document his or her successful completion of professional education coursework.⁵

¹ INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited March 16, 2021).

² Section 626.864, F.S.

³ Sections 626.015(2) and 626.8548, F.S.

⁴ Section 626.854, F.S.

⁵ Section 626.221, F.S.

An examination is not required for all-lines adjuster applicants having one of the following professional designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state.
- Associate in Claims (AIC) from the Insurance Institute of America.
- Professional Claims Adjuster (PCA) from the Professional Career Institute.
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy.
- Certified Adjuster (CA) from ALL LINES Training.
- Certified Claims Adjuster (CCA) from AE21 Incorporated.
- Claims Adjuster Certified Professional (CACP) from WebCE, Inc.
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).⁶

The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.⁷ The DFS rules state that the curriculum must include at least 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by the DFS.⁸

Encore Claims Services provides training for individuals in the insurance industry⁹ and offers a 40-hour online course to assist individuals applying for all-lines adjuster licenses.¹⁰ Encore is a subsidiary of JYM Associates Group Inc., a Florida for-profit corporation based in Jacksonville.¹¹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 626.221, F.S., to exempt an applicant who receives an Accredited Insurance Claims Specialist (AICS) designation from Encore Claim Services, from the all-lines adjuster licensing exam requirement. However, Encore's curriculum still must be approved by the DFS, pursuant to s. 626.221(2)(j), F.S., and Rule 69B-227.320, F.A.C., before the exemption would apply.

Section 2 of the bill reenacts s. 626.8734, F.S., to incorporate the amendment made to s. 626.221, F.S.

Section 3 of the bill provides an effective date of July 1, 2021.

⁶ Section 626.221(2)(j), F.S.

⁷ *Id.*

⁸ Rule 69B-227.320, F.A.C.

⁹ About us, Encore Claim Services, <https://encoreclaimservices.com/aboutus/#> (last visited March 16, 2021).

¹⁰ Encore Claim Services 40-hour Online Claim Adjuster Training, Encore Claim Services, <https://encoreclaimservices.teachable.com/p/florida-all-lines-adjuster-final-exam> (last visited March 16, 2021).

¹¹ *Supra* note 9; Detail by Entity Name: JYM Associates Group Inc., Division of Corporations: Sunbiz.org, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=JYMASSOCIATESGROUP%20P190000278530&aggregateId=domp-p19000027853-2eb71327-7ed7-4dea-9b5c-0c37bbe3e227&searchTerm=JYM%20ASSOCIATES%20GROUP%20INC.&listNameOrder=JYMASSOCIATESGROUP%20P190000278530> (last visited March 16, 2021).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

SB 534 may reduce licensure fees for some applicants who have the AICS designation by eliminating their need to pay the examination fee.

C. Government Sector Impact:

The bill may cause the DFS to incur some cost in reviewing and approving the AICS curriculum offered by Encore to confirm that said curriculum comports with the requirements of Section 626.221(2)(j), F.S., and Rule 69B-227.320, F.A.C.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 626.221 of the Florida Statutes.
This bill reenacts s. 626.8734 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.

By Senator Gibson

6-00285-21

2021534__

A bill to be entitled
An act relating to insurance representative
examination requirements; amending s. 626.221, F.S.;
exempting certain applicants for licensure as an all-
lines adjuster from a required examination; reenacting
s. 626.8734, F.S., relating to nonresident all-lines
adjuster license qualifications, to incorporate the
amendment made to s. 626.221, F.S., in a reference
thereto; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section
626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the
following:

(j) An applicant for license as an all-lines adjuster who
has the designation of Accredited Claims Adjuster (ACA) from a
regionally accredited postsecondary institution in this state,
Associate in Claims (AIC) from the Insurance Institute of
America, Professional Claims Adjuster (PCA) from the
Professional Career Institute, Professional Property Insurance
Adjuster (PPIA) from the HurriClaim Training Academy, Certified
Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster
(CCA) from AE21 Incorporated, Claims Adjuster Certified
Professional (CACP) from WebCE, Inc., Accredited Insurance
Claims Specialist (AICS) from Encore Claim Services, or
Universal Claims Certification (UCC) from Claims and Litigation

6-00285-21

2021534__

30 Management Alliance (CLM) whose curriculum has been approved by
31 the department and which includes comprehensive analysis of
32 basic property and casualty lines of insurance and testing at
33 least equal to that of standard department testing for the all-
34 lines adjuster license. The department shall adopt rules
35 establishing standards for the approval of curriculum.

36 Section 2. For the purpose of incorporating the amendment
37 made by this act to section 626.221, Florida Statutes, in a
38 reference thereto, paragraph (b) of subsection (1) of section
39 626.8734, Florida Statutes, is reenacted to read:

40 626.8734 Nonresident all-lines adjuster license
41 qualifications.—

42 (1) The department shall issue a license to an applicant
43 for a nonresident all-lines adjuster license upon determining
44 that the applicant has paid the applicable license fees required
45 under s. 624.501 and:

46 (b) Has passed to the satisfaction of the department a
47 written Florida all-lines adjuster examination of the scope
48 prescribed in s. 626.241(6); however, the requirement for the
49 examination does not apply to:

50 1. An applicant who is licensed as an all-lines adjuster in
51 his or her home state if that state has entered into a
52 reciprocal agreement with the department;

53 2. An applicant who is licensed as a nonresident all-lines
54 adjuster in a state other than his or her home state and a
55 reciprocal agreement with the appropriate official of the state
56 of licensure has been entered into with the department; or

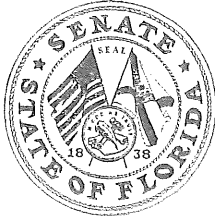
57 3. An applicant who holds a certification set forth in s.
58 626.221(2)(j).

6-00285-21

2021534__

59

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Military and Veterans Affairs, Space,
and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON
6th District

March 10, 2021

Senator Jeff Brandes, Chair
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Brandes:

I respectfully request that SB 534, be placed on the next committee agenda.

SB 534, allows high school students the opportunity to have a profession in the insurance industry by completing a 40-hour curriculum and exempting them from sitting the state exam which reduces barriers to become a licensed adjuster. This bill passed unanimously in the first committee.

Thank you for your kind and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/22/2021 3:30:21 PM

Ends: 3/22/2021 6:00:56 PM **Length:** 02:30:36

3:30:20 PM Meeting called to order and roll call
3:30:30 PM Chair Brandes introductory comments and Covid-19 Precautions
3:30:56 PM Introduction of Tab 5, SB 1108 by Chair Brandes
3:31:51 PM Explanation of SB 1108, Education by Senator Diaz
3:34:58 PM Introduction of Amendment Barcode 607414 by Chair Brandes
3:35:05 PM Explanation of Amendment by Senator Diaz
3:35:17 PM Comments from Chair Brandes
3:35:48 PM Closure waived
3:35:51 PM Amendment adopted
3:36:05 PM Question from Senator Rouson
3:36:11 PM Response from Senator Diaz
3:36:40 PM Comments from Chair Brandes
3:36:51 PM Alexis Caltayud, Florida Department of Education waives in support
3:37:18 PM Speaker Robert Holladay, Self and other History and Government Teachers in support
3:38:37 PM Debbie Mortham, The Foundation for Florida's future waives in support
3:39:41 PM Florida Department of Education waives in support
3:40:00 PM Senator Boyd in debate
3:40:36 PM Closure waived
3:40:41 PM Roll call by CAA
3:40:46 PM CS/SB 1108 reported favorably
3:41:02 PM Introduction of Tab 1, SB 26 by Chair Brandes
3:41:18 PM Explanation of SB 26, Relief of the Estate of Crystie Marie Galloway/Hillsborough County Board of County Commissioners
3:42:38 PM Introduction of Late-filed Amendment Barcode 906790 by Chair Brandes
3:42:47 PM Explanation of Amendment by Senator Cruz
3:43:05 PM Comments from Chair Brandes
3:43:11 PM Amendment adopted
3:43:21 PM Comments from Chair Brandes
3:43:35 PM Senator Rouson in debate
3:45:16 PM Senator Cruz in closure
3:45:21 PM Roll call by CAA
3:45:26 PM CS/SB 26 reported favorably
3:45:48 PM Introduction of Tab 4, SB 1070 by Senator Brandes
3:46:07 PM Explanation of SB 1070, Estates and Trusts by Senator Berman
3:47:49 PM Introduction of Amendment Barcode 637000 by Chair Brandes
3:47:58 PM Explanation of Amendment by Senator Berman
3:48:15 PM Comments from Chair Brandes
3:48:39 PM Closure waived
3:48:41 PM Amendment adopted
3:48:44 PM Comments from Chair Brandes
3:49:02 PM Martha Edenfield, The Real Property, Probate and Trust Law Section of the Florida Bar waives in support

3:49:08 PM Kenneth Pratt, Florida Bankers Association waives in support
3:49:22 PM Comments from Chair Brandes
3:49:35 PM Senator Baxley in debate
3:50:14 PM Closure waived
3:50:18 PM Roll call by CAA
3:50:26 PM CS/SB 1070 reported favorably
3:50:45 PM Introduction of Tab 7, CS/SB 1532 by Chair Brandes
3:51:04 PM Explanation of CS/SB 1532, Child Support by Senator Book
3:52:29 PM Introduction of Amendment Barcode 737956 by Chair Brandes
3:52:35 PM Explanation of Amendment by Senator Book
3:52:50 PM Comments from Chair Brandes
3:53:04 PM Closure waived
3:53:07 PM Amendment adopted
3:53:10 PM Comments from Chair Brandes
3:53:18 PM Question from Senator Baxley
3:54:07 PM Comments from Chair Brandes
3:54:12 PM Closure waived
3:54:14 PM Roll call by CAA
3:54:25 PM CS/CS/SB 1532 reported favorably
3:54:42 PM Introduction of Tab 11, SB 402 by Chair Brandes
3:55:00 PM Explanation of Delete-all Amendment Barcode 553328 by Senator Rodrigues
3:58:21 PM Comments from Chair Brandes
3:58:26 PM Question from Senator Polsky
3:58:42 PM Response from Senator Rodrigues
3:59:32 PM Follow-up question from Senator Polsky
3:59:41 PM Response from Senator Rodrigues
4:00:34 PM Question from Senator Broxson
4:00:44 PM Response from Senator Rodrigues
4:01:52 PM Question from Senator Rouson
4:01:57 PM Response from Senator Rodrigues
4:03:21 PM Follow-up question from Senator Rouson
4:03:29 PM Response from Senator Rodrigues
4:04:54 PM Question from Senator Gibson
4:05:00 PM Response from Senator Rodrigues
4:06:25 PM Follow-up question from Senator Gibson
4:06:32 PM Response from Senator Rodrigues
4:06:47 PM Follow-up question from Senator Gibson
4:06:54 PM Response from Senator Rodrigues
4:07:30 PM Speaker Jeff Kottkamp in opposition
4:10:50 PM Speaker Bryan Boukari, Alachua County Today Newspaper in opposition
4:12:56 PM Speaker Foy Maloy, News Leader & Nassau County Record in opposition
4:15:00 PM Speaker Matt Newby, Outpost Publishing in opposition
4:15:35 PM Speaker Jon Cantrell, Clay Today Newspaper in opposition
4:17:31 PM Speaker Michael Leonard, Palatka Daily News/Florida Press in opposition
4:18:18 PM Comments from Chair Brandes
4:19:12 PM Senator Boyd in debate
4:19:31 PM Chair Brandes in debate
4:19:48 PM Closure waived
4:20:26 PM Amendment adopted
4:20:43 PM Question from Senator Gibson
4:20:49 PM Response from Senator Rodrigues
4:23:17 PM Chair turned over to Senator Gibson

4:23:32 PM Speaker Emily Walsh, Observer Media Group & Florida Press Association in opposition
4:24:34 PM Speaker Emerald Greene, Greene Publishing & Florida Press Association in opposition
4:26:21 PM Speaker Jamie Wachter, Lake City Reporter/Florida Press Association in opposition
4:27:44 PM Speaker Jon Cantrell, Clay Today Newspaper in opposition
4:28:47 PM Speaker Sam Morley, Florida Press Association in opposition
4:29:17 PM Matt Newby, Outpost Publishing in opposition
4:29:37 PM Speaker Jim Fogler, The Florida Press Association in opposition
4:31:29 PM Speaker Tim Thompson, Panama City News Herald in opposition
4:32:34 PM Speaker Todd Neves, Neves Media Publishing in opposition
4:33:42 PM Speaker Michael Leonard, Palatka Daily News/Florida Press in opposition
4:34:56 PM Speaker Foy Maloy, News Leader & Nassau County Record in opposition
4:35:05 PM Speaker William Hatfield, Tallahassee Democrat in opposition
4:36:02 PM Speaker Glen Nickerson, The Daily Sun & Venice Gandolier in opposition
4:37:46 PM Speaker Nicole Barefield, Neves Media Publishing, Washington County News, Holmes County Times, Port St. Joe Star, Apalachicola Times Advertiser in opposition
4:39:41 PM Speaker Sandi Kemp, The Public's Right to Know in opposition
4:40:34 PM Karen Tower, Florida Press Foundation waives in opposition
4:41:37 PM Lauren Gallo, League of Women Voters Florida waives in opposition
4:41:50 PM Speaker Mike Sandler in opposition
4:42:31 PM Speaker Brewster Bevis, Associated Industries of Florida in opposition
4:44:50 PM Chair returned for Senator Brandes
4:45:01 PM Speaker Ron Book, Gannett in opposition
4:46:02 PM Speaker Douglas Ray in opposition
4:47:09 PM Speaker Bryan Boukari, Alachua County Today Newspaper in opposition
4:48:05 PM Comments from Chair Brandes
4:48:11 PM Senator Gibson in debate
4:52:40 PM Senator Baxley in debate
4:55:42 PM Senator Broxson in debate
4:57:15 PM Senator Rodrigues in closure
4:57:55 PM Roll call by CAA
4:58:56 PM CS/SB 402 reported favorably
4:59:29 PM Introduction of Tab 13, SB 534 by Chair Brandes
5:00:00 PM Explanation of SB 534, Insurance representative Examination Requirements by Senator Gibson
5:00:49 PM Comments from Chair Brandes
5:01:02 PM Closure waived
5:01:04 PM Roll call by CAA
5:01:11 PM SB 534 reported favorably
5:01:30 PM Introduction of Tab 3, SB 382 by Chair Brandes
5:01:44 PM Explanation of SB 382, Clerks of the Court by Senator Hooper
5:02:33 PM Jenna Hodgins, Cindy Stuart, Clerk of the Court/Comptroller Hillsborough County waives in support
5:02:36 PM Speaker Tom Bexley, Florida Court Clerks & Comptrollers in support
5:03:31 PM Comments from Chair Brandes
5:03:40 PM Closure waived
5:03:43 PM Roll call by CAA
5:03:48 PM SB 382 reported favorably
5:04:05 PM Introduction of Tab 6, SB 1498 by Chair Brandes
5:04:16 PM Explanation of SB 1498, Renaming the Criminal Punishment Code by Senator Pizzo
5:05:03 PM Comments from Chair Brandes
5:05:19 PM Senator Baxley in debate
5:05:42 PM Senator Pizzo in closure

5:05:55 PM Roll call by CAA
5:06:02 PM SB 1498 reported favorably
5:06:19 PM Introduction of Tab SB 398 by Chair Brandes
5:06:46 PM Explanation of SB 398, Relief of Estate of Emilio Jesus Vizcaino-Aday by Miami-Dade County by Senator Rodriguez
5:07:20 PM Comments from Chair Brandes
5:07:34 PM Closure waived
5:07:36 PM Introduction of Late-filed Amendment Barcode 505872 by Chair Brandes
5:07:57 PM Explanation of Amendment by Senator Rodriguez
5:08:11 PM Amendment adopted
5:08:22 PM Closure waived
5:08:25 PM Roll call by CAA
5:08:29 PM CS/SB 398 reported favorably
5:08:45 PM Introduction of Tab 8, SB 1876 by Chair Brandes
5:09:00 PM Explanation of SB 1876, Governmental Actions Affecting Private Property Rights by Senator Albritton
5:10:20 PM Introduction of Strike-all Amendment Barcode 296194 by Chair Brandes
5:10:29 PM Explanation of Amendment by Senator Albritton
5:10:35 PM Question from Senator Broxson
5:10:48 PM Response from Senator Albritton
5:13:08 PM Follow-up question from Senator Broxson
5:13:21 PM Response from Senator Albritton
5:13:49 PM Follow-up question from Senator Broxson
5:13:57 PM Response from Senator Albritton
5:14:36 PM Comments from Chair Brandes
5:14:47 PM Question from Senator Gibson
5:14:56 PM Response from Senator Albritton
5:15:11 PM Brewster Bevis, Associated Industries of Florida waives in support
5:15:20 PM Speaker Ken Safriet, Hopping Greens & Sams for information
5:16:50 PM Closure waived
5:16:53 PM Amendment adopted
5:17:07 PM Jane West, 1000 Trends of Florida waives in opposition
5:17:11 PM Jim Spratt, Florida Forestry Association waives in support
5:17:16 PM Landon Hoffman, Florida Farm Bureau waives in support
5:17:21 PM David Cruz, Florida League of Cities, Inc. waives in opposition
5:17:24 PM Brewster Bevis, Associated Industries of Florida waives in support
5:17:40 PM Speaker David Cullen, Sierra Club Florida
5:18:39 PM Closure waived
5:18:42 PM Roll call by CAA
5:18:46 PM CS/SB 1876 reported favorably
5:19:09 PM Introduction of Tab 10, SM 1630 by Chair Brandes
5:19:27 PM Explanation of SM 1630, Second Amendment for the Constitution of the United States by Senator Hutson
5:20:03 PM Comments from Chair Brandes
5:20:09 PM Question from Senator Polsky
5:20:18 PM Response from Senator Hutson
5:20:35 PM Follow-up question from Senator Polsky
5:21:33 PM Response from Senator Hutson
5:22:34 PM Follow-up question from Senator Polsky
5:22:40 PM Response from Senator Hutson
5:23:09 PM Follow-up question from Senator Polsky
5:23:18 PM Response from Senator Hutson

5:24:25 PM Follow-up question from Senator Polsky
5:24:32 PM Response from Senator Hutson
5:25:03 PM Question from Senator Gibson
5:25:09 PM Response from Senator Hutson
5:25:50 PM Follow-up question from Senator Gibson
5:26:35 PM Response from Senator Hutson
5:26:58 PM Follow-up question from Senator Gibson
5:27:05 PM Response from Senator Hutson
5:28:17 PM Question from Senator Rouson
5:28:25 PM Response from Senator Hutson
5:29:01 PM Follow-up question from Senator Rouson
5:29:08 PM Response from Senator Hutson
5:29:15 PM Follow-up question from Senator Rouson
5:29:23 PM Response from Senator Hutson
5:29:54 PM Follow-up question from Senator Rouson
5:30:00 PM Response from Senator Hutson
5:31:07 PM Question from Senator Broxson
5:31:22 PM Response from Senator Hutson
5:32:16 PM Marion P. Hammer, NRA and Unified Sportsmen of Florida waives in support
5:32:43 PM Senator Polsky in debate
5:36:05 PM Senator Thurston in debate
5:37:26 PM Senator Baxley in debate
5:39:13 PM Senator Hutson in closure
5:39:32 PM Roll call by CAA
5:40:31 PM SM 1630 reported favorably
5:40:57 PM Introduction of Tab 9, SB 1922 by Chair Brandes
5:41:31 PM Explanation of SB 1922, Dissolution of Marriage by Senator Gruters
5:48:18 PM Question from Senator Gibson
5:49:18 PM Response from Chair Brandes
5:49:46 PM Speaker John Fromularo in support
5:50:39 PM Senator Gruters mentions that he has a Technical Amendment
5:51:06 PM Speaker Deborah Shultz, MD, Florida Family Alimony Reform in support
5:53:26 PM Speaker Lisa Williams in opposition
5:56:55 PM Speaker Cynthia Luz in opposition
5:59:03 PM Senator Broxson would like to be showing voting in the affirmative on CS/SB 1108, SB 26, CS/SB 1070, CS/CS/SB 1532
5:59:06 PM Senator Rodrigues would like to be shown voting in the affirmative on SB 534, SB 382, SB 1498, SB 398, CS/SB 1876, SM 1620, CS/SB 1922
6:00:08 PM Senator Thurston would like to be shown as no on CS/SB 402, SB 534, SB 382, SB 1498, SB 398 in the affirmative and change C/SSB 1876 to a no vote
6:00:26 PM Senator Polsky would like to be shown voting in the affirmative on CS/SB 1108
6:00:33 PM Senator Bradley would like to be shown voting in the affirmative on CS/SB 1108, CS/SB 1070, CS/CS/SB 1532, CS/SB 402, CS/SB 26
6:00:40 PM Meeting adjourned