The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Burgess, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, January 24, 2022
TIME: 3:00—5:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Burgess, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 840** Albritton (Identical H 841)	Residential Property Riparian Rights; Requiring land surveyors to give preference to using the prolongation-of-property-line method to establish a property owner's riparian rights along a channel under certain circumstances; requiring courts to award reasonable attorney fees and costs to a prevailing party in a civil action under certain circumstances, etc. EN 01/10/2022 Favorable JU 01/24/2022 Favorable RC	Favorable Yeas 9 Nays 0
2	**SB 1408** Perry (Compare H 1119)	Grandparent Rights in Dependency Proceedings; Revising the definition of the term "party"; creating a presumption for granting a maternal or paternal grandparent or stepgrandparent reasonable visitation of a dependent child under certain circumstances; requiring the court to automatically grant standing in a dependency proceeding to the maternal or paternal grandparent or stepgrandparent under certain circumstances, etc. JU 01/24/2022 Fav/CS CF RC	Fav/CS Yeas 9 Nays 0
3	**SB 1808** Bean (Identical H 1355)	Immigration Enforcement; Revising the definition of the term "sanctuary policy" to include specified laws, policies, practices, procedures, or customs that limit or prohibit a law enforcement agency from providing specified immigration information to a state entity; requiring each law enforcement agency operating a county detention facility to enter into a specified agreement with the United States Immigration and Customs Enforcement to assist with immigration enforcement; prohibiting a governmental entity from executing, amending, or renewing a contract with common carriers under certain circumstances, etc. JU 01/24/2022 Favorable AP RC	Favorable Yeas 6 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 70** Rouson (Identical H 6509)	Relief of Donna Catalano by the Department of Agriculture and Consumer Services; Providing for the relief of Donna Catalano by the Department of Agriculture and Consumer Services; providing an appropriation to compensate Donna Catalano for injuries and damages sustained as a result of the negligence of Donald Gerard Burthe, an employee of the Department of Agriculture and Consumer Services; providing a limitation on the payment of compensation and attorney fees, etc. SM JU 01/24/2022 Favorable AEG AP	Favorable Yeas 9 Nays 0
5	**SB 80** Baxley (Identical H 6515)	Relief of Christeia Jones/Department of Highway Safety and Motor Vehicles; Providing for the relief of Christeia Jones, as guardian of Logan Grant, Denard Maybin, Jr., and Lanard Maybin; providing an appropriation to compensate them for injuries and damages sustained as a result of an automobile accident caused by Trooper Raul Umana, an employee of the Florida Highway Patrol, a division of the Department of Highway Safety and Motor Vehicles; providing a limitation on the payment of compensation and attorney fees, etc. SM JU 01/24/2022 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 0
6	**SB 1796** Gruters (Similar H 1395)	Dissolution of Marriage; Requiring the court to prioritize certain forms of alimony; authorizing the court to grant permanent alimony only if both parties enter into such agreement; revising factors that the court must consider in determining the proper type and amount of alimony; prohibiting an award of rehabilitative alimony from exceeding specified timeframes; requiring the court to consider specified factors when determining an alimony award involving the existence of a supportive relationship between the obligee and another person; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances, etc. JU 01/24/2022 Fav/CS AP RC	Fav/CS Yeas 6 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 536** Diaz (Similar CS/H 337)	Administrative Procedures; Applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan, etc. JU 01/24/2022 Favorable AP RC	Favorable Yeas 9 Nays 0
8	**SB 968** Polsky (Identical H 649)	Individual Retirement Accounts; Specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt, etc. BI 01/12/2022 Favorable JU 01/24/2022 Favorable RC	Favorable Yeas 9 Nays 0
9	**SB 1032** Burgess (Similar H 845)	Guardianships; Citing this act as the "Florida Guardianship Jurisdiction Act"; authorizing courts of this state to communicate with courts of another state relating to certain proceedings; specifying actions that a court of this state may request from, and perform for, a court of another state in certain guardianship proceedings; authorizing a court of this state to decline to exercise its jurisdiction under certain circumstances; authorizing a guardian appointed in this state to petition to transfer the guardianship to another state, etc. JU 01/24/2022 Fav/CS CF RC	Fav/CS Yeas 9 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 840
INTRODUCER:	Senator Albritton
SUBJECT:	Residential Property Riparian Rights
DATE:	January 21, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Favorable**
2.	Bond	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 840 requires land surveyors to give a preference to the prolongation-of-property-line method of establishing the boundaries of a residential property owner's riparian rights along a channel, unless doing so would result in an inequitable apportionment of the riparian rights at issue. In connection with this preference, the bill defines the terms "channel" and "prolongation-of-property-line method"; limits the scope of the preference to riparian waters only (not littoral waters, such as a lake, an ocean, or a gulf); and provides that the preference only applies when establishing the boundaries of riparian rights after July 1, 2022.

The bill also provides that in a civil action relating to the riparian rights of a residential dock owner, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, the court must award reasonable attorney fees and costs to the defendant if the defendant is the prevailing party.

The bill is effective upon becoming law.

II. Present Situation:

Riparian Rights Generally

Riparian rights[1] are rights of a landowner incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been

[1] Technically, the term "riparian" refers to land abutting nontidal or navigable river waters, and the term "littoral" refers to land abutting navigable ocean, sea, or lake waters. *5F, LLC v. Hawthorne*, 317 So. 3d 220, 222 n.1 (Fla. 2d DCA 2021) and *Walton County v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1105 n.3 (Fla. 2008), *aff'd sub nom. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702 (2010). However, the term "riparian" is commonly used to refer to all waterfront owners, so "riparian rights" can be used to refer to rights associated with both riparian and littoral lands. *Id.*

defined by law.[2] Riparian rights benefit the owner of the riparian land, but such rights are attached to the land and are not owned by the land owner. In order for the rights to attach, the land must extend to the ordinary high water mark[3] of the navigable water. Whoever owns or leases the land enjoys the rights, regardless of whether they are mentioned in a deed or lease.[4] Riparian rights may not be taken without just compensation and due process of law.[5] Where a landowner's common-law riparian rights are violated by the acts of another individual, the landowner may bring an action on his or her own behalf.[6]

The state holds title to sovereign submerged lands in trust for public use.[7] The public generally enjoys rights such as bathing, fishing, commerce, and navigation.[8] Upland property owners enjoy these rights in common with the public.[9] Riparian rights are additional, exclusive rights that are held by upland property owners but not the general public.[10] Such rights generally include, but are not limited to, the following:

- Access to and from the water.
- An unobstructed view over the water.
- Reasonable use of the water.
- Accretions and relictions.[11]
- Wharfing out, meaning building structures on the shoreline.[12]

The doctrines of erosion, accretion, and reliction are also riparian rights.[13] When gradual and imperceptible losses or additions to the shoreline occur, the boundary between public and private land (i.e., the mean high-water line)[14] is altered accordingly.[15] Riparian property owners

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[2] Section 253.141(1), F.S. (2021); *see also Odom v. Deltona Corp*., 341 So. 2d 977, 981 (Fla. 1976) (providing that "whether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust [under Article X, Section 11 of the Florida Constitution] is a question of fact and dependent upon whether or not the body of water is permanent in character and, in its ordinary and natural state, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located); *see also Brevard Cty. v. Blasky*, 875 So. 2d 6, 13-14 (Fla. 5th DCA 2004) (explaining that navigability is determined as of 1845, the date Florida became a state).

[3] *Walton County*, 998 So. 2d at 1124 (noting that the "ordinary high water mark is well established as the dividing line between private riparian and sovereign or public ownership of the land beneath the water"); *see also* s. 253.03(8)(b), F.S. (identifying "submerged lands," for purposes of inventorying public lands, as "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state"); *see also* s. 177.28, F.S. (same).

[4] Section 253.141(1), F.S.

[5] *Broward v. Mabry*, 58 Fla. 398, 410 (1909).

[6] *Harrell v. Hess Oil & Chem. Corp.*, 287 So. 2d 291, 295 (Fla. 1973).

[7] FLA. CONST. art. X, s. 11.

[8] *Walton County*, 998 So. 2d at 1110-11.

[9] *Id.* at 1110-11. These special littoral rights are such as are necessary for the use and enjoyment of the upland property, but these rights may not be so exercised as to injure others in their lawful rights. *Id.* at 1111.

[10] *Id.*

[11] *Id.*

[12] *See* Brendan Mackesey, *An Overview of Riparian Rights in Florida*, The Reporter, The Environmental and Land Use Law Section, Vol. XLI, No. 1, 1, 13–16 (2020), *available at* https://eluls.org/wp-content/uploads/2021/02/The-Environmental-and-Land-Use-Law-Section-Reporter-October-2020.pdf (last visited Jan. 16, 2022).

[13] *Walton County*, 998 So. 2d at 1112-15. "Accretion" is the gradual and imperceptible accumulation of land; "reliction" is an increase of the land by a gradual and imperceptible withdrawal of a waterbody. *Id.* at 1113.

[14] *See* s. 177.28(1), F.S.

[15] *Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 936 (Fla. 1987).

automatically take title to dry land added to their property by accretion or reliction.[16] However, under the doctrine of avulsion, following sudden or perceptible loss or addition to the shoreline, the boundary between public and private land remains where it existed before the avulsive event occurred.[17]

Establishing Lines of Riparian Rights

In the 1954 Florida Supreme Court case *Hayes v. Bowman*, opposing parties proposed two different methods for allocating riparian rights: one party argued the lines should extend from the property lines directly into the channel (referred to herein as the "prolongation-of-property-line" method for allocating riparian rights), and the other argued the lines should be drawn at right angles from the thread of the channel to the corners of the property.[18] The Court stated that, based on the nature of upland boundary lines, it is impossible to formulate a geometric rule to govern all cases.[19] Thus, the Court prescribed a rule requiring that, based on the factual circumstances presented, the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the channel so as to distribute equitably the submerged lands between the upland and the channel.[20] Such equitable distribution must give due consideration to the lay of the upland shore line, the direction of the channel, and the co-relative rights of adjoining upland owners.[21]

The principles established in *Hayes* still apply in Florida today.[22] Courts recognize that land surveyors and other practitioners may use many methods to equitably apportion riparian rights, and no one method is proper or improper.[23] The reasoning for this includes inherent aspects of the uplands to which riparian rights are attached: upland property boundaries intersect the water at almost every different angle, and the thread of a channel is seldom, if ever, parallel to the shoreline of the uplands.[24] Rights are applied based on the shape of the uplands, the shape of the waterbody, and the parties' relative position to each other.[25]

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[16] *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 709 (2010); *see also Bd. of Trustees of the Internal Imp. Tr. Fund v. Sand Key Assocs., Ltd.*, 512 So. 2d 934, 938-39 (holding that owners have a right to claim accreted land when the accretion was artificially-caused, as long as the owner did not cause the accretion); *see also New Jersey v. New York*, 523 U.S. 767, 783 (1998) (explaining that an owner may not extend their own property into the water by landfilling or purposefully causing accretion); *see also* s. 161.051, F.S. (providing that the state will retain title to additions or accretions to the permitee's property caused by permitted coastal improvements).

[17] *Walton County*, 998 So. 2d at 1114. "Avulsion" is the sudden or perceptible loss of or addition to land by the action of the water or a sudden change in the bed of a lake or the course of a stream. *Id.* at 1116.

[18] *Hayes v. Bowman*, 91 So. 2d 795, 801 (Fla. 1957).

[19] *Id*. at 801-802.

[20] *Id*. at 802. In the opinion, the Court expressly references the rights of an unobstructed view of the channel and unobstructed means of ingress and egress over the foreshore and tidal waters. *Id.* at 801. The Court states that if the exercise of these rights is prevented, the upland owner is entitled to relief. *Id.*

[21] *Id*. at 802.

[22] *Lee Cty. v. Kiesel*, 705 So. 2d 1013, 1015 (Fla. 2d DCA 1998); *Lake Conway Shores Homeowners Ass'n, Inc. v. Driscoll*, 476 So. 2d 1306, 1308 (Fla. 5th DCA 1985).

[23] *Nourachi v. United States*, 655 F. Supp. 2d 1215, 1227 (M.D. Fla. 2009).

[24] *Hayes*, 91 So. 2d at 801-802.

[25] *Johnson v. McCowen*, 348 So. 2d 357, 360 (Fla. 1st DCA 1977).

The use of a particular delineation method may be struck down by a court if the method is found to unfairly impact a party's riparian rights.[26] In one case, a Florida court reversed a decision of a trial judge who used a prolongation-of-property-line method, holding that extending the line of the property boundary in this particular case destroyed an adjacent parcel owner's littoral rights, and remanding for an equitable determination of the parties' respective rights.[27]

The Florida Statutes do not address the methodology for establishing boundaries for riparian rights. The Florida Administrative Code's rules on sovereignty submerged lands generally require all structures and activities to be set back a minimum of 25 feet inside the applicant's riparian rights lines.[28] The rules also require applicants seeking standard leases of sovereignty submerged lands to show the applicant's upland parcel property lines and associated riparian rights lines.[29]

In 2013, the Department of Environmental Protection (DEP) published general guidelines for the allocation of riparian rights, based on research analyzing existing methods for allocating riparian rights together with a study of different shoreline configurations.[30] Concentrating on the right of ingress and egress to and from the water (including dock construction) and the right to a view over the water – the two riparian rights "equities" of primary interest among owners – the document includes eight conclusions from the research, summarized as follows:

- When docking is the primary issue, the courts will usually apportion the space between the shore and the line of navigability (i.e., the line of deep water).
- For a straighter shore on a large waterbody, the division lines are perpendicular to the direction of the shore extended to the line of navigable water.
- Along a river without a marked channel, lines are usually perpendicular with the stream's thread (i.e., median).
- Along a river or other waterbody with a nearby marked channel and regular shore, the lines are usually perpendicular with the nearest channel edge and not the thread.
- The direction of upland boundaries is largely ignored when apportioning riparian rights ("[t]he public's mistaken belief that riparian lines are on the extension of their side upland lines is the most frequent cause of riparian disputes").[31] The water body must be equitably apportioned as if all waterfront owners were standing on the shore looking out over the waterbody.
- When the shore is irregular (e.g., coves, bays, lakes, rivers) most courts apportion the line of deep water to divide riparian rights as opposed to any perpendicular method.
- Some situations require apportionment of the entire water surface, and then certain methods are used such as the center point method for lakes.

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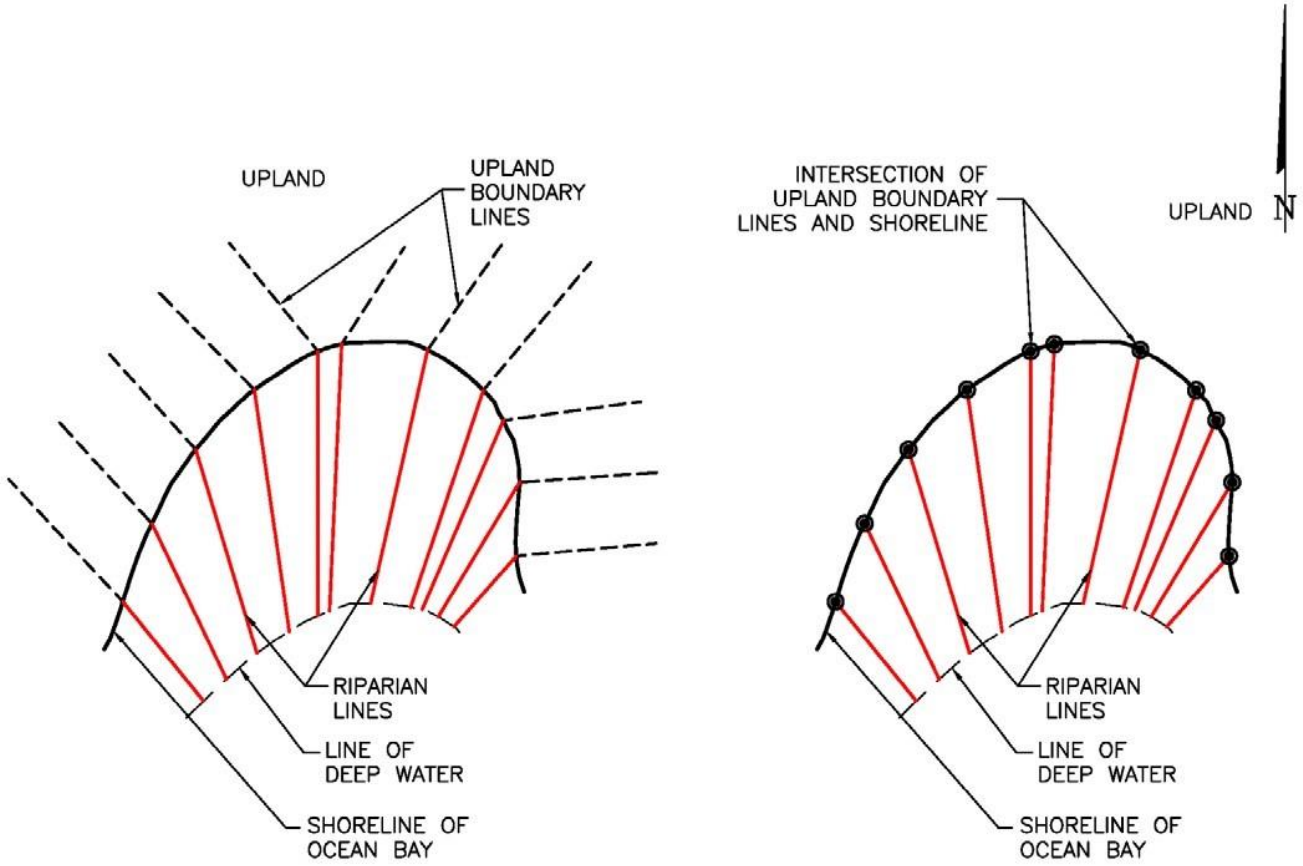
[26] *Lake Conway Shores Homeowners Ass'n, Inc. v. Driscoll*, 476 So. 2d 1306, 1309-10 (Fla. 5th DCA 1985).
[27] *Id.*; *see also Muraca v. Meyerowitz*, 818 N.Y.S.2d 450, 456-57 (Sup. Ct. 2006).
[28] Fla. Admin. Code R. 18-21.004(3)(d) (noting also that the minimum setback is 10 feet for marginal docks, and that other exceptions apply).
[29] Fla. Admin. Code R. 18-21.008(1)(a)4.f.
[30] Florida Dep't of Environmental Protection, SLER 0950, Survey Requirements, *Guidelines for Allocation of Riparian Rights*, 7-18 (2013), *available at* https://apps.sfwmd.gov/entsb/docdownload?object_id=0900eeea8a95bcd3 (last visited Jan. 16, 2022).
[31] *Id*. at 8. The diagram shows how it is the locations where the upland boundary lines intersect the shoreline (not the direction of the boundary lines landward of the shoreline) that are relevant for apportionment.

- Apportioning the line of deep water is the most universal method, and it gives the same solution as more traditional techniques in many cases and follows dominant national case law where the shore is irregular.[32]



III. Effect of Proposed Changes:

The bill amends s. 253.141(1), F.S., to require land surveyors to give preference to the prolongation-of-property-line method of establishing the boundaries of a residential property owner's riparian rights along a channel. The prolongation-of-property-line method would apply in connection with the construction of docks, piers, marinas, moorings, pilings, and other private improvements, unless doing so would result in an inequitable apportionment of the riparian rights among property owners along the channel.

The bill defines the term "channel" to mean the marked, buoyed, or artificially dredged channel, if any; or if none, a space equal to 20 percent of the average width of the river or stream at the

[32] *Id*. at 7-9.

point concerned, which furnishes uninterruptedly, through its course, the deepest water at ordinary low water.

The bill defines the term "prolongation-of-property-line method" to mean establishing the boundary of a property owner's riparian rights by extending the owner's property line out into the waterbody at the same angles at which they intersect the ordinary high watermark.

This preference does not apply to littoral waters, such as a lake, an ocean, or a gulf; and it only applies when establishing the boundaries of riparian rights after July 1, 2022.

The bill amends s. 253.141(1), F.S., to provide that in a civil action relating to the riparian rights of a residential dock owner, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, in which the defendant is the prevailing party, the court must award reasonable attorney fees and costs to the prevailing party.

The bill reenacts s. 403.813(1)(s) and s. 403.9323(3), F.S., for the purpose of incorporating the amendments to s. 253.141(1), F.S., into same.

The bill takes effect upon becoming a law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 253.141 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 403.813 and 403.9323.

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 Albritton

26-00971-22 2022840__

A bill to be entitled

An act relating to residential property riparian rights; amending s. 253.141, F.S.; requiring land surveyors to give preference to using the prolongation-of-property-line method to establish a property owner's riparian rights along a channel under certain circumstances; defining terms; providing applicability; requiring courts to award reasonable attorney fees and costs to a prevailing party in a civil action under certain circumstances; reenacting ss. 403.813(1)(s) and 403.9323(3), F.S., relating to permits issued at district centers and legislative intent in recognizing rights of riparian property ownership, respectively, to incorporate the amendment made to s. 253.141, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 253.141, Florida Statutes, is amended to read:

253.141 Riparian rights defined; certain submerged bottoms subject to private ownership.—

(1)(a) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to

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and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.

(b) When establishing the boundaries of a residential property owner's riparian rights along a channel, for purposes of the construction of docks, piers, marinas, moorings, pilings, and other private improvements, land surveyors must give preference to the prolongation-of-property-line method unless doing so would result in inequitable apportionment of riparian rights among property owners along the channel.

1. As used in this paragraph, the term:

a. "Channel" means the marked, buoyed, or artificially dredged channel, if any, or if none, means a space equal to 20 percent of the average width of the river or stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at ordinary low water.

b. "Prolongation-of-property-line method" means establishing the boundary of a property owner's riparian rights by extending the owner's property line out into the waterbody at the same angles at which they intersect the ordinary high watermark.

2. This paragraph does not apply to littoral waters, such as a lake, an ocean, or a gulf.

3. This paragraph applies only when establishing the boundaries of riparian rights after July 1, 2022.

(c) In a civil action relating to the riparian rights of a

residential dock owner, when such rights are exercised with all appropriate environmental and regulatory approvals and permits, in which the defendant is the prevailing party, the court shall award reasonable attorney fees and costs to the prevailing party.

Section 2. For the purpose of incorporating the amendment made by this act to section 253.141, Florida Statutes, in a reference thereto, paragraph (s) of subsection (1) of section 403.813, Florida Statutes, is reenacted to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require a person claiming this exception to provide further department verification, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(s) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when

not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund

and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, may not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands

owned by the Board of Trustees of the Internal Improvement Trust Fund. Local governments may not impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

Section 3. For the purpose of incorporating the amendment made by this act to section 253.141, Florida Statutes, in a reference thereto, subsection (3) of section 403.9323, Florida Statutes, is reenacted to read:

403.9323 Legislative intent.—

(3) It is the intent of the Legislature to provide waterfront property owners their riparian right of view, and other rights of riparian property ownership as recognized by s. 253.141 and any other provision of law, by allowing mangrove trimming in riparian mangrove fringes without prior government approval when the trimming activities will not result in the removal, defoliation, or destruction of the mangroves.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that **Senate Bill #840**, relating to Residential Riparian Property Rights, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

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 1408
INTRODUCER:	Judiciary Committee and Senator Perry
SUBJECT:	Grandparent Rights in Dependency Proceedings
DATE:	January 26, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1408 amends Florida's "Grand Parental Visitation Rights" law to include an additional situation where a grandparent may petition for reasonable visitation with his or her grandchild.

Specifically, the bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption would only apply to the grandparents who are the parents of the grandchild's deceased parent. A court may decline to grant these visitation rights if visitation is not in the best interest of the child.

The bill takes effect July 1, 2022.

II. Present Situation:

Grandparent Visitation Rights

While parental rights have a well-founded history in U.S. legal system, grandparent's rights are, in comparison, a more recent development. Under the common law, grandparents had no standard legal right to visit their grandchildren. Grandparent visitation rights began to gain

prominence in the 1960s, and today every state in the union has some form of grandparent visitation standard.[1]

Colorado, for example, allows grandparents to request visitation rights in child custody cases or cases concerning the allocation of parental responsibilities, including those cases where a parent has become deceased.[2] Connecticut authorizes visitation if the grandparent can prove by clear and convincing evidence that a parent-like relationship exists between the grandparent and the minor and that denial of such visitation would cause real and significant harm.[3] Georgia authorizes a court to award visitation rights in to any grandparent who is the parent of a deceased, incapacitated, or incarcerated[4] parent and specifically provides that parental objection to such visitation is merely given deference and is not conclusive to the court's decision.[5]

Similar to the national trend with grandparent's visitation rights, Florida has had a long history with grandparent visitation legislation. In 1978, the Legislature adopted grandparent visitation legislation allowing courts to award grandparent visitation rights in dissolution of marriage proceedings under.[6] This provision, under ch. 61, F.S., was eventually repealed after courts ruled that grandparents lacked standing to petition in such dissolution of marriage cases.[7]

In 1984, the Legislature enacted ch. 752, F.S., titled "Grandparents Visitation Rights," granting grandparents standing to petition the court for visitation in certain limited situations.[8] In 1993, ch. 752, F.S., was further amended to grant grandparents standing to file an action for visitation rights in situations where the family was still intact, but one or both of the parents "used their

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[1] Sarah Elizabeth Culley, *Troxel v. Granville and its Effect on the Future of Grandparent Visitation Statutes*; *Legislative Reform*, JOURNAL OF LEGISLATION, Vol. 27:1, at 238, available at http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg.

[2] Colo. Rev. Stat. Ann. § 19-1-117. This sections specifically defines "case concerning the allocation of parental responsibilities with respect to a child" to include situations where: a parent has died, the marriage of the child's parents has been declared invalid or dissolved by a court, or legal custody or parental responsibility has been given or allocated to a party other than the child's parent.

[3] Conn. Gen. Stat. Ann. § 46b-59. The Supreme Court of Connecticut has held "When an otherwise fit parent denies his or her child access to an individual who has a parent-like relationship with the child and the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm, the State has a compelling interest in protecting the child's own complementary interest in preserving parent-like relationships that serve the child's welfare by avoiding the serious and immediate harm to the child that would result from the parent's decision to terminate or impair the child's relationship with the third party." *Boisvert v. Gavis*, 210 A.3d 1, 15 (Conn. 2019)(citing to that child *Roth v. Weston*, 789 A.2d 431, 445 (Conn. 2002)).

[4] Ga. Code Ann. § 19-7-3(d). The Supreme Court of Georgia has ruled, however, that this provision still requires proof by clear and convincing evidence of actual or threatened harm to the child in order to override an otherwise fit parents objection. *Patten v. Ardis*, 816 S.E.2d 633, 637 (Ga. 2018).

[5] Ga. Code Ann. § 19-7-3(c)(3) provides that "a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some minimal opportunity for contact with his or her family member when there is a preexisting relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption."

[6] Section 61.1306(1), F.S. (1977).

[7] *Shuler v. Shuler*, 371 So. 2d 588, 590 (Fla. 1st DCA 1979).

[8] Specifically, s. 752.01(1) (a-c), F.S. (1993) allowed visitation to be awarded if the court determined it to be in the best interests of the child and one of the following circumstances existed: (1) one or both of the child's parents were deceased, (2) the parents are divorced, (3) one parent had deserted the child, or (4) the child was born out of wedlock.

parental authority to prohibit a relationship between the minor child and the grandparents."[9] The constitutionality of this new subsection was specifically addressed in the 1996 case *Beagle v. Beagle*. In *Beagle,* the Florida Supreme Court ruled that this subsection was facially unconstitutional and did not satisfy *strict scrutiny*, holding that under Florida's *privacy clause*[10] "the State may not intrude upon the parents' fundamental right to raise their children except in cases where the child is threatened with harm"[11]

In 2000, the Florida Supreme Court addressed the constitutionality of a 1997 amendment to ch. 61, F.S., which gave a grandparent the right to intervene in a custody dispute involving their grandchild if the grandparent could prove (1) that the grandchild was residing with them and (2) that the grandchild had a stable relationship with them. The court ruled that this amended section was unconstitutional because it allowed courts to make custody decisions based solely on the best interest of the child and placed the legal interests of the grandparent as equal to those of the parents.[12] Finally, the court again addressed grandparent's rights in 2004, invalidating another amendment to ch. 61, F.S., which authorized courts in dissolution of marriage proceedings to award a grandparent reasonable visitation with their grandchild if it was in the children's best interest.[13]

Currently, statutes relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. As previously discussed, ch. 61, F.S., has had various different grandparent rights provisions, but each has been repealed by the Legislature as a result of litigation. Chapter 752, F.S., titled "Grandparental Visitation Rights" allows for visitation to be awarded when a minor child's parents are deceased, missing, or in a permanent vegetative state.[14] If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must also find the grandparent has made a prima facie showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

Dependency Proceedings

A dependent child is a child found by a court to have been abandoned, abused, or neglected by the child's parents or other custodians.[15] The Department of Children and Families is responsible for providing care, safety and protection to the dependent children in its care. One of the most essential functions of the Department is to achieve *permanency*, that is, to find a permanent stable environment for the child to be placed in. Florida courts have a large role in supervising a

[9] Section 752.01(1)(e), F.S. (1995).
[10] Specifically, Florida's right to privacy provision states: "Every natural person has the right to be let alone and free from governmental intrusion into the persons private life except as otherwise provided herein." FLA. CONST. art. I, s. 23.
[11] *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).
[12] *Richardson v. Richardson*, 766 So. 2d 1036, 1039 (Fla. 2000).
[13] *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants."
[14] Section 752.011, F.S.
[15] Section 984.03(12)(a-f), F.S. Additionally, dependent children may be those who are surrendered, voluntarily placed with adoption agencies, have no legal guardian, or are at a substantial risk of imminent abuse or neglect by the parent or parents of the custodian.

child's case through the dependency and adoption process. Section 39.812(3), F.S, provides [t]he court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted." Additionally, courts are required to enter any orders the court deems necessary and suitable to promote and protect the best interests of a child to be adopted.[16]

The Legislative Intent of Part IV of ch. 39, F.S., titled "Taking Children into Custody and Shelter Hearings" specifically provides that:

> Every child in out-of-home care be afforded the advantages that can be gained from the use of family finding to establish caring and long-term or permanent connections and relationships for children and youth in out-of-home care, as well as to establish a long-term emotional support network with family members and other adults who may not be able to take the child into their home but who want to stay connected with the child.[17]

Consistent with the above legislative intent, grandparents often play an important role in the dependency system. Nationwide, 2.7 million grandparents are raising grandchildren and nearly half of all children living with their grandchildren are under the age of 6.[18] When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless it is not in the best interest of the child or would interfere with the goals of the case plan.[19] These rights do not cease even if the court enters an order for termination of the child's parental rights. Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.

III. Effect of Proposed Changes:

The bill amends ch. 752, F.S., titled "Grandparental Visitation Rights," to allow a grandparent to petition for reasonable visitation with his or her grandchild in a narrow set of circumstances.

The bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption for visitation rights applies only to a grandparent who is a parent of the grandchild's deceased parent. This presumption may be overcome if the court finds that granting such visitation is not in the best interests of the child.

The bill applies to both biological grandparents, as well as step-grandparents.

The bill takes effect July 1, 2022.

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[16] Section 63.022(4)(k), F.S.
[17] Section 39.04015(1)(e), F.S.
[18] Children Now, *A Focus on Grandparents, The 2020 Census is Underway*, (Apr. 27, 2020) *available at* https://www.childrennow.org/blog/2020-census/.
[19] Section 39.509, F.S.

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:

The United States Supreme Court has recognized the fundamental liberty interests involved in the "care, custody and management" of their children.[20] The Florida Supreme Court has likewise recognized that decisions related to parenting are fundamental rights within the Fourteenth Amendment of the United States Constitution and the liberty interests under the *privacy clause* of the State Constitution.[21] Any statute that infringes on these rights is subject to the highest level of judicial scrutiny, and the government must prove that the statute in question serves a compelling government interest through the lease intrusive means necessary.

As discussed in the Current Situation section, grandparent visitation legislation has frequently been litigated and invalidated in this state. Some legislative efforts have been scrutinized by the courts for interfering with the fundamental rights of parents or for forcing courts to replace parental decisions with their own judgement. As discussed in the Florida Supreme Court's 1996 *Beagle* decision, the issue with much of the previous legislation concerned the fact that the legislation allowed for the courts to intervene even when there was no showing of harm to a child. In comparison to some previous legislative efforts, however, the bill is much more narrowly tailored, and potentially distinguishable from the invalidated statutes.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[20] *Troxel*, 530 U.S. 57, 65 (2000).
[21] *See supra* notes 6-7 and accompanying text.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

Statutes Affected:

This bill substantially amends section 752.011, Florida Statutes.

VIII. 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 January 24, 2022
The CS revises the bill to be consistent with the House companion. The original Senate bill authorized additional grandparent rights in the context of a dependency proceeding. The CS authorizes a grandparent to be granted visitation with a grandchild in a narrow set of circumstances, but the grandchild need not be a subject of a dependency proceeding.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2022	.	
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	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (2) through (11) of section 752.011, Florida Statutes, are redesignated as subsections (3) through (12), respectively, a new subsection (2) is added to that section, and present subsections (4) and (5) of that section are amended, to read:

752.011 Petition for grandparent visitation with a minor child.—A grandparent of a minor child whose parents are

deceased, missing, or in a persistent vegetative state, or whose one parent is deceased, missing, or in a persistent vegetative state and whose other parent has been convicted of a felony or an offense of violence evincing behavior that poses a substantial threat of harm to the minor child's health or welfare, may petition the court for court-ordered visitation with the grandchild under this section.

(2) Notwithstanding subsection (1), if the court finds that one parent of a child has been held criminally or civilly liable for the death of the other parent of the child, there is a presumption for granting reasonable visitation with the petitioning grandparent or stepgrandparent if he or she is the parent of the child's deceased parent. This presumption may be overcome only if the court finds that granting such visitation is not in the best interests of the child.

(5) ~~(4)~~ In assessing the best interests ~~interest~~ of the child under subsection (4) ~~(3)~~, the court shall consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

(a) The love, affection, and other emotional ties existing between the minor child and the grandparent, including those resulting from the relationship that had been previously allowed by the child's parent.

(b) The length and quality of the previous relationship between the minor child and the grandparent, including the extent to which the grandparent was involved in providing regular care and support for the child.

(c) Whether the grandparent established ongoing personal contact with the minor child before the death of the parent,

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before the onset of the parent's persistent vegetative state, or before the parent was missing.

(d) The reasons cited by the respondent parent in ending contact or visitation between the minor child and the grandparent.

(e) Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm.

(f) The existence or threat to the minor child of mental injury as defined in s. 39.01.

(g) The present mental, physical, and emotional health of the minor child.

(h) The present mental, physical, and emotional health of the grandparent.

(i) The recommendations of the minor child's guardian ad litem, if one is appointed.

(j) The result of any psychological evaluation of the minor child.

(k) The preference of the minor child if the child is determined to be of sufficient maturity to express a preference.

(l) A written testamentary statement by the deceased parent regarding visitation with the grandparent. The absence of a testamentary statement is not deemed to provide evidence that the deceased or missing parent or parent in a persistent vegetative state would have objected to the requested visitation.

(m) Other factors that the court considers necessary to


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making its determination.

(6)~~(5)~~ In assessing material harm to the parent-child relationship under subsection (4) ~~(3)~~, the court shall consider the totality of the circumstances affecting the parent-child relationship, including:

(a) Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the minor child.

(b) Whether visitation would materially interfere with or compromise parental authority.

(c) Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to disruption of the schedule and routine of the parent and the minor child.

(d) Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship.

(e) Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent.

(f) The nature of the relationship between the child's parent and the grandparent.

(g) The reasons cited by the parent in ending contact or visitation between the minor child and the grandparent which was previously allowed by the parent.

(h) The psychological toll of visitation disputes on the

minor child.

(i) Other factors that the court considers necessary in making its determination.

Section 2. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to grandparent visitation rights; amending s. 752.011, F.S.; creating a presumption for maternal or paternal grandparent or stepgrandparent visitation of a child under certain circumstances; providing a burden for overcoming such presumption; providing an effective date.

By Senator Perry

8-01746-22 20221408__

A bill to be entitled

An act relating to grandparent rights in dependency proceedings; amending s. 39.01, F.S.; revising the definition of the term "party"; amending s. 39.509, F.S.; creating a presumption for granting a maternal or paternal grandparent or stepgrandparent reasonable visitation of a dependent child under certain circumstances; providing a burden for overcoming such presumption; authorizing the maternal or paternal grandparent or stepgrandparent of a dependent child to file a motion to intervene in a dependency proceeding under certain circumstances; requiring the court to automatically grant standing in a dependency proceeding to the maternal or paternal grandparent or stepgrandparent under certain circumstances; providing an effective date.

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

Section 1. Subsection (58) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(58) "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The maternal or paternal grandparent or stepgrandparent of the child may become a party, but only to the extent permitted under s. 39.509(2). The

8-01746-22 20221408__

presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

Section 2. Section 39.509, Florida Statutes, is amended to read:

39.509 Grandparents rights.—

(1) Notwithstanding any other provision of law, a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated a dependent child and taken from the physical custody of the parent unless the court finds that such visitation is not in the best interests ~~interest~~ of the child or that such visitation would interfere with the goals of the case plan. If the court finds that one parent of the dependent child has been held criminally or civilly liable for the death of the other parent of the dependent child, there is a presumption for granting reasonable visitation with the petitioning grandparent or stepgrandparent if he or she is the parent of the dependent child's deceased parent. This presumption may be overcome only if the court finds that granting such visitation is not in the best interests of the child. Reasonable visitation may be unsupervised and, where appropriate and feasible, may be frequent and continuing. Any order for visitation or other contact must conform to ~~the provisions of~~ s. 39.0139.

(a)~~(1)~~ Grandparent visitation may take place in the home of the grandparent unless there is a compelling reason for denying such a visitation. The department's caseworker shall arrange the

visitation to which a grandparent is entitled under ~~pursuant to~~ this section. The state may ~~shall~~ not charge a fee for any costs associated with arranging the visitation. However, the grandparent must ~~shall~~ pay for the child's cost of transportation when the visitation is to take place in the grandparent's home. The caseworker must ~~shall~~ document the reasons for any decision to restrict a grandparent's visitation.

(b)~~(2)~~ A grandparent entitled to visitation under ~~pursuant to~~ this section is ~~shall~~ not ~~be~~ restricted from appropriate displays of affection to the child, such as appropriately hugging or kissing his or her grandchild. Gifts, cards, and letters from the grandparent and other family members may ~~shall~~ not be denied to a child who has been adjudicated a dependent child.

(c)~~(3)~~ Any attempt by a grandparent to facilitate a meeting between the child who has been adjudicated a dependent child and the child's parent or legal custodian, or any other person in violation of a court order shall automatically terminate future visitation rights of the grandparent.

(d)~~(4)~~ When the child has been returned to the physical custody of his or her parent, the visitation rights granted under ~~pursuant to~~ this section ~~shall~~ terminate.

(e)~~(5)~~ The termination of parental rights does not affect the rights of grandparents unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of permanency planning for the child.

(f)~~(6)~~ In determining whether grandparental visitation is not in the child's best interest, consideration may be given to

the following:

1.~~(a)~~ The finding of guilt, regardless of adjudication, or entry or plea of guilty or nolo contendere to charges under the following statutes, or similar statutes of other jurisdictions: s. 787.04, relating to removing minors from the state or concealing minors contrary to court order; s. 794.011, relating to sexual battery; s. 798.02, relating to lewd and lascivious behavior; chapter 800, relating to lewdness and indecent exposure; s. 826.04, relating to incest; or chapter 827, relating to the abuse of children.

2.~~(b)~~ The designation by a court as a sexual predator as defined in s. 775.21 or a substantially similar designation under laws of another jurisdiction.

3.~~(c)~~ A report of abuse, abandonment, or neglect under ss. 415.101-415.113 or this chapter and the outcome of the investigation concerning such report.

(2) Notwithstanding any other provision of law, once a child has been adjudicated a dependent child and is taken from the physical custody of the parent, the maternal or paternal grandparent or stepgrandparent of that child may file a motion to intervene in the dependency proceeding. If the court has terminated parental rights, the maternal or paternal grandparent or stepgrandparent of the child shall automatically become a party to the dependency proceeding unless the court finds that allowing the grandparent or stepgrandparent standing is not in the best interests of the child.

Section 3. This act shall take effect July 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2022

I respectfully request that **Senate Bill #1408**, relating to Grandparent Rights in Dependency Proceedings, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022
Meeting Date

Judiciary
Committee

1408 - Grandparent Rights
Bill Number or Topic

Amendment Barcode (if applicable)

Name Zayne Smith

Phone 850.228.4243

Address 215 S. Monroe St.
Street

Email zsmith@aarp.org

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
AARP

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

1/24/22
Meeting Date

Judiciary
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB 1408
Bill Number or Topic

Amendment Barcode (if applicable)

Name Philip S. Wartenberg

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Email philip.wartenberg@fljud13.org

Tampa FL 33602
City State Zip

FAMILY LAW SECTION OF THE FL BAR

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022
Meeting Date

Judiciary
Committee

SB 1408
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ron Watson

Phone 850 567-1202

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Email watson.strategies@comcast.net

Tallahassee FL 32317
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

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 1808
INTRODUCER:	Senator Bean
SUBJECT:	Immigration Enforcement
DATE:	January 21, 2022
REVISED:	

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

I. Summary:

SB 1808 amends the federal immigration enforcement laws that were enacted in 2019. The laws prohibit sanctuary policies and seek to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws.

The bill changes three areas of the existing immigration enforcement statutes. The bill:

- Expands the definition of "sanctuary policy" to include any law, policy, practice, procedure, or custom of any state or local governmental entity that prohibits a law enforcement agency from providing to any *state entity* information on the immigration status of a person in the custody of the law enforcement agency.
- Requires each law enforcement agency that operates a county detention facility to enter into a "287(g) Agreement" with U.S. Immigration and Customs Enforcement.
- Prohibits state and local governmental entities from contracting with common carriers that willfully transport an unauthorized alien into the state, knowing the unauthorized alien entered or remains in the country in violation of the law. The bill also specifies that contracts, including a grant agreement or economic incentive program, must include certain provisions attesting that the common carrier is not, and will not, willfully provide the prohibited services to an unauthorized alien.

II. Present Situation:

Federal Immigration Enforcement Statutes

In 2019, the Legislature passed federal immigration enforcement legislation.[1] The act sought to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law. When local law enforcement agencies work with federal immigration officials, aliens who have committee serious crimes are more easily identified and removed.

Definition of Sanctuary Policy

Section 908.102(6), F.S., defines a "sanctuary policy" as:
A law, policy, practice, procedure, or custom that is adopted or allowed by a state entity or local governmental entity which:

- Prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373;[2] or
- Prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit the law enforcement agency in, or prohibit the agency from:
  - Complying with an immigration detainer;
  - Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency;
  - Providing a federal immigration agency access to an inmate for interview;
  - Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357; or
  - Providing a federal immigration agency with an inmate's incarceration status or release date.

Immigration Enforcement Assistance Agreements

Overview
The Immigration and Nationality Act[3] contains a provision in Section 287(g) which established what is commonly referred to today as the "ICE 287(g) Program." The program is a delegation of federal authority that authorizes the Director of ICE to enter into a partnership agreement with a state or local law enforcement entity. Under the terms of the agreement, designated law enforcement officers, who are specially trained and supervised, may perform limited immigration law enforcement activities within their respective jurisdictions. The agreements

[1] Chapter 2019-102, Laws of Fla. The law was challenged in *City of South Miami v. DeSantis*, --- F.Supp.3d ----, 2021WL 4272017 (S.D. Fla. Sept. 21, 2021). Several provisions were held unconstitutional but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and is now pending.
[2] 8 U.S.C. s. 1373 addresses communication between government agencies and the Immigration and Naturalization Service. The statute provides, in part:
Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
[3] 8 U.S. Code s. 1101 *et seq*.

permit state and local law enforcement officers to identify, arrest, and serve warrants and detainers on individuals who are foreign-born and have criminal charges or convictions.[4]

2019 State Immigration Enforcement Laws

Section 908.106, F.S., requires each county correctional facility to enter into an agreement with a federal immigration agency for the temporary housing and payment of costs for people who are the subject of immigration detainers. Since the 2019 immigration enforcement laws were enacted, most of the state's sheriffs have entered into 287(g) agreements with ICE to work cooperatively with the federal government to enforce federal immigration laws.

Two 287(g) Models

The U.S. Immigration and Customs Enforcement website lists two types of 287(g) models: the Jail Enforcement Model and the more limited Warrant Service Officer Model.

The Jail Enforcement Model (JEM) "is designed to identify and process removable noncitizens with criminal or pending criminal charges who are arrested by state or local" law enforcement agencies. The local ICE Office of Enforcement and Removal Operation Field Office supervises the program and local law enforcement officers are trained at the Federal Law Enforcement Training Center ICE Academy located in Charleston, South Carolina.[5]

The Warrant Service Officer Model (WSO) is described as a narrower cooperative agreement. Under the provisions of this model, state and local law enforcement officers are "trained, certified, and authorized by ICE to perform limited functions of an immigration officer within the law enforcement agency's jail and/or correctional facilities" as described in the memorandum of agreement. Officers who are nominated for the program are trained by certified instructors at a location that is located near the law enforcement agency.[6]

Data

For Fiscal Year 2020, ICE reports that 287(g) programs accounted for the following encounters involving noncitizens:

- 920 persons convicted for assault.
- 1,261 persons convicted for dangerous drugs.
- 104 persons convicted for sexual offenses or assaults.
- 377 persons convicted for obstructing police.
- 190 persons convicted for weapon offenses,
- 37 persons convicted for homicide.[7]

According to ICE, as of November, 2021:

- 66 law enforcement agencies in 19 states have entered into 287(g) JEM agreements, and
- 76 law enforcement agencies in 11 states have entered into 287(g) WSO agreements.[8]

[4] U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, (updated Dec. 15, 2021) *available at* https://www.ice.gov/identify-and-arrest/287g.
[5] *Id.*, "Types of Models."
[6] *Id.*
[7] *Id.*, "287(g) Successes."
[8] *Id.*, "Participating Entities."

Florida Law Enforcement Counties or Departments with 287(g) Agreements
The following 49 law enforcement agencies or counties in Florida have entered into 287(g) agreements:

Warrant Service Officer Agreements
Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Columbia, DeSoto, Flagler, Franklin, Hamilton, Hendry, Hernando, Highland, Holmes, Indian River, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Osceola, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Wakulla, and Walton Counties.

Jail Enforcement Model
Clay, Collier, , Hernando, Jacksonville-Duval, and Pasco Counties, and the Florida Department of Corrections.

III. Effect of Proposed Changes:

The bill makes three changes to the existing immigration enforcement statutes. The bill:
- Amends the definition of "sanctuary policy."
- Requires each law enforcement agency operating a county detention facility to enter into a 287(g) agreement with U.S. Immigration and Customs Enforcement.
- Prohibits state and local governmental entities from contracting with common carriers that willfully transport an unauthorized alien into the state, knowing the unauthorized alien entered or remains in the country in violation of the law. The bill also specifies that contracts, including a grant agreement or economic incentive program, must include certain provisions attesting that the common carrier is not, and will not, willfully provide the prohibited services to an unauthorized alien.

Definition of Sanctuary Policy (Section 1)

The bill expands the definition of "sanctuary policy" by adding a sixth element to the definition. The definition is expanded to include any law, policy, practice, procedure, or custom of any state or local government entity that prohibits or impedes a law enforcement agency from providing to any *state entity* information on the immigration status of an inmate or detainee in the custody of the law enforcement agency.

Immigration Enforcement Assistance Agreements (Section 2)

By January 1, 2023, each law enforcement agency that operates a county detention facility is required to enter into a 287(g) agreement with ICE. However, the bill does not specify which model program the law enforcement agency must choose.

Common Carrier Contracts (Section 3)

The final section of the bill defines the terms common carrier,[9] governmental entity,[10] and unauthorized alien[11] and provides contract specifications for governmental entities that enter into contracts with common carriers.

Under this section, a governmental entity may not execute, amend, or renew a contract with a common carrier if the carrier is willfully providing any service in furtherance of transporting an unauthorized alien into the state knowing that the unauthorized alien entered into or remains in the United States in violation of law.

Additionally, each contract executed, amended, or renewed between a governmental entity and a common carrier on or after October 1, 2022, including a grant agreement or economic incentive program payment agreement, must include:

- An attestation[12] by the common carrier that it is not willfully providing and will not willfully provide any service during the term of the contract in furtherance of transporting an unauthorized alien into the state knowing that the unauthorized alien entered into or remains in the United States in violation of law. A governmental entity is deemed to be in compliance with these provisions upon receipt of the common carrier's attestation.
- A provision for termination for cause of the contract, grant agreement, or economic incentive program agreement if a common carrier, despite the attestation, is found to be willfully providing any service in furtherance of transporting an unauthorized alien into the state knowing the unauthorized alien entered into or remains in the United States in violation of law.

The Department of Management Services is required to develop by rule, no later than August 30, 2022, a common carrier attestation form.

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[9] The bill defines "common carrier" to mean a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

[10] The bill defines "governmental entity" to mean an agency of the state, a regional or a local government created by the State Constitution or by general or special act, a county or municipality, or any other entity that independently exercises governmental authority.

[11] The bill defines "unauthorized alien" to mean a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term is to be interpreted consistently with that section and any applicable federal rules or regulations.

[12] The attestation must be verified as provided in s. 92.525, F.S. which states, in part:

92.525 Verification of documents; perjury by false written declaration, penalty.—

(1) If authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10, to administer oaths; or

(c) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Effective Date
The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact to state and local governments is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 908.102 of the Florida Statutes.
This bill creates the following sections of the Florida Statutes: 908.11 and 908.111.

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 Bean

4-01386B-22 20221808__

A bill to be entitled

An act relating to immigration enforcement; amending s. 908.102, F.S.; revising the definition of the term "sanctuary policy" to include specified laws, policies, practices, procedures, or customs that limit or prohibit a law enforcement agency from providing specified immigration information to a state entity; creating s. 908.11, F.S.; requiring each law enforcement agency operating a county detention facility to enter into a specified agreement with the United States Immigration and Customs Enforcement to assist with immigration enforcement; requiring such agency to report specified information concerning such agreement quarterly to the Department of Law Enforcement; creating s. 908.111, F.S.; providing definitions; prohibiting a governmental entity from executing, amending, or renewing a contract with common carriers under certain circumstances; requiring specified governmental entity contracts with common carriers to include specified provisions on or after a certain date; requiring the Department of Management Services to develop a specified form; providing an effective date.

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

Section 1. Subsection (6) of section 908.102, Florida Statutes, is amended to read:

908.102 Definitions.—As used in this chapter, the term:

4-01386B-22 20221808__

(6) "Sanctuary policy" means a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373 or which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement agency in, or prohibit the agency from:

(a) Complying with an immigration detainer;

(b) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency;

(c) Providing a federal immigration agency access to an inmate for interview;

(d) Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357 as required by s. 908.11; ~~or~~

(e) Providing a federal immigration agency with an inmate's incarceration status or release date; or

(f) Providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency.

Section 2. Section 908.11, Florida Statutes, is created to read:

908.11 Immigration enforcement assistance agreements; reporting requirement.—

(1) By January 1, 2023, each law enforcement agency operating a county detention facility must enter into a written agreement with the United States Immigration and Customs Enforcement to participate in the immigration program

established under s. 287(g) of the Immigration and Nationality Act, 8 U.S.C. s. 1357. This subsection does not require a law enforcement agency to participate in a particular program model.

(2) Beginning no later than October 1, 2022, and until the law enforcement agency enters into the written agreement required under subsection (1), each law enforcement agency operating a county detention facility must notify the Department of Law Enforcement quarterly of the status of such written agreement and any reason for noncompliance with this section, if applicable.

Section 3. Section 908.111, Florida Statutes, is created to read:

908.111 Prohibition against governmental entity contracts with common carriers; required termination provisions.—

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

(a) "Common carrier" means a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

(b) "Governmental entity" means an agency of the state, a regional or a local government created by the State Constitution or by general or special act, a county or municipality, or any other entity that independently exercises governmental authority.

(c) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable

federal rules or regulations.

(2) A governmental entity may not execute, amend, or renew a contract with a common carrier if the carrier is willfully providing any service in furtherance of transporting an unauthorized alien into the State of Florida knowing that the unauthorized alien entered into or remains in the United States in violation of law.

(3) A contract between a governmental entity and a common carrier which is executed, amended, or renewed on or after October 1, 2022, including a grant agreement or economic incentive program payment agreement, must include:

(a) An attestation by the common carrier, verified as provided in s. 92.525, that the common carrier is not willfully providing and will not willfully provide any service during the contract term in furtherance of transporting an unauthorized alien into the state knowing that the unauthorized alien entered into or remains in the United States in violation of law. A governmental entity is deemed to be in compliance with subsection (2) upon receipt of the common carrier's attestation.

(b) A provision for termination for cause of the contract, grant agreement, or economic incentive program payment agreement if a common carrier, despite the attestation, is found to be willfully providing any service in furtherance of transporting an unauthorized alien into the state knowing the unauthorized alien entered into or remains in the United States in violation of law.

(4) The Department of Management Services shall develop by rule a common carrier attestation form no later than August 30, 2022.

Section 4. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 12, 2022

I respectfully request that **Senate Bill #1808,** relating to Immigration Enforcement, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/24/22
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Yarelis Mendez-Zumora

Phone

Address
Street

Email

Pembroke Pines FL
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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1/25/22
Meeting Date

JUDICIARY
Committee

SB 1008
Bill Number or Topic

Amendment Barcode (if applicable)

Name THOMAS KENNEDY

Phone 786 346 0819

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MIAMI FLORIDA 33135
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1/24/22
Meeting Date

Judiciary
Committee

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SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Towson Fraser

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Address 115 E Park Ave, Suite 1
Street

Email TowsonFraser@FLlobby.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
The American Business Immigration Coalition

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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01/24/22
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Danielle Chanzes

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Street

Email daniellechanzes@gmail.com

Gainesville FL
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

1/24/2022
Meeting Date

Judiciary
Committee

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SB1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Melissa Taveras

Phone 786 956 0352

Address 2800 Biscayne Blvd #300
Street

Email

Miami FL 33131
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Fla Immigrant Coalition

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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1/24/2022
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Neisha-Rose Hines Phone 786-365-1154

Address 4343 W. Flagler St Email

Street

Miami FL

City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: ACLU FL

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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1/24/22
Meeting Date

Judiciary
Committee

1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Phone 407 376 4801

Address 134 E. Colonial Dr
Street

Orlando FL 32801
City State Zip

Email

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Immigrant Coalition

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Jan. 24, 2022
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul Christian Namphy

Phone 954-851-2525

Address 100 NE 84th St
Street

Email pnamphy@fanm.org

Miami FL 33138
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: FANM

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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1/24/22
Meeting Date

JUDICIARY
Committee

1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name JJ Holmes

Phone

Address
Street

Email

City State 32750 Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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1/24/2022
Meeting Date

Judiciary
Committee

~~1078~~ 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott, Jr

Phone 850-521-3042

Address P.O. Box 10788
Street

Email donn.scottjr@splcenter.org

Tallahassee, FL 32302
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Southern Poverty Law Action Center

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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1/24/2022
Meeting Date

Judiciary
Committee

1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 579 E. Call St.
Street

Email fctfep@yahoo.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: FL Center for Fiscal & Economic Policy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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January 24, 2022
Meeting Date

Judiciary
Committee

1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Phone 850-425-1344

Address 104 South Monroe Street
Street

Email TcgLobby@aol.com

Tallahassee FL 32301
City *State* *Zip*

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1-24-22
Meeting Date

Judiciary
Committee

1808
Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

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S-001 (08/10/2021)

The Florida Senate

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1/24/22
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ashley Hamill

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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

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S-001 (08/10/2021)

The Florida Senate

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11/24/22
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Sofia S. Arpuña

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32301
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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24 JAN 2022
Meeting Date

JUDICIARY
Committee

SB 1068
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Jedynak

Phone 352-733-7731

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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/4/22
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Postgate

Phone

Address
Street

Email

32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

1/24/2022
Meeting Date

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SB 1808
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Tracey Stallworth

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Quincy FL 32351
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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01/24/2022
Meeting Date

Judiciary
Committee

SB 1808
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michi C

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City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

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1/24/2022
Meeting Date

1808
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name David Caicedo

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Email

Orlando FL 32801
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
1/19/22	SM	Favorable
1/24/22	JU	Favorable
	ATD	
	AP	

January 19, 2022

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

Re: **SB 80** – Senator Baxley
HB 6515 – Representative McClure
Relief of Christeia Jones/Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $17,715,000, BASED ON A MEDIATION SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT, CHRISTEIA JONES, AS PARENT AND NATURAL GUARDIAN OF LOGAN GRANT, DENARD MAYBIN,JR., AND LANARD MAYBIN AND THE FLORIDA HIGHWAY PATROL/FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. THE MEDIATION SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A FLORIDA HIGHWAY PATROL VEHICLE WHICH RESULTED IN A CRASH AND SEVERE INJURIES TO THE CHILDREN.

UPDATE TO PRIOR REPORT

On October 29, 2019, Ms. Christie M. Letarte, serving as Senate Special Master, held a hearing on a previous version of this bill SB 16 (2020). After the hearing, Ms. Letarte issued a report dated February 6, 2020 containing findings of fact and conclusions of law based on argument and information provided before, during, and at the hearing solely by counsel for the claimants, as a litigation settlement agreement required the Florida Highway Patrol, a division of the

Department of Highway Safety and Motor Vehicles, to remain silent on the claim bill and not support or oppose the bill. Ms. Letarte found the amount sought is reasonable when compared to analyses provided by claimants' economist. A copy of that report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendations in the previous report.

The undersigned has received no information to indicate that any such changes have occurred since the hearing. An updated statement dated August 31, 2021 from the Department of Highway Safety and Motor Vehicles (Department) through its General Counsel, identifying the source of payment for the claim bill if approved by the Legislature without an appropriation of additional funds, and describing the impact that the payment might have on the Department's operations, indicates:

> Senate Bill 80 appropriates $17.715M from the General Revenue Fund to the [Department] for the relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin. If this legislation is approved without an appropriation, the Department would have no existing budget authority to pay the claim. The only course of action if no appropriation is approved would be to request budget authority from the General Revenue Funds pursuant to Chapter 216.177, F.S. Should an appropriation be made from the Highway Safety Operating Trust Fund, it would severely and detrimentally limit Department operations, requiring vacant positions to be unfilled in order to have the cash to pay the claim and still meet other operational obligations. This would include all Divisions throughout the Department, including the Florida Highway Patrol and Motorist Services Field Offices providing driver license and motor vehicle services.[1]

[1] E-mail Correspondence from Ms. Christie S. Utt, General Counsel for the Department (Aug. 31, 2021).

RECOMMENDATIONS:

The undersigned concurs in the following Recommendation in the previous report, which are applicable to SB 80:

> Although the settlement agreement resolved Christeia Jones' claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[2]
>
> Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[3]

For the reasons set forth above, the undersigned Senate Special Master recommends that Senate Bill 80 (2022) be reported FAVORABLY.

Respectfully submitted,

Mary K. Kraemer
Senate Special Master

cc: Secretary of the Senate

[2] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[3] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
2/6/20	SM	Report Submitted
	JU	
	ATD	
	AP	

February 6, 2020

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16** – Senator Simmons
HB 6517 – Representative Williamson
Relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin by the Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR GENERAL REVENUE FUNDS IN THE AMOUNT OF $17,715,000. THIS AMOUNT IS THE REMAINING BALANCE OF AN $18,000,000 SETTLEMENT AGREEMENT REGARDING ALLEGED NEGLIGENCE OF TROOPER RAUL UMANA AND THE FLORIDA HIGHWAY PATROL, A DIVISION OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

FINDINGS OF FACT:

The Accident

On May 18, 2014, at approximately 9:25 p.m., Florida Highway Patrol (FHP) Trooper Raul Umana, traveling north on I-75 in a 2007 Crown Victoria patrol vehicle, attempted to turn around using a crossover gap in the median. Trooper Umana had been on the far right shoulder assisting with a disabled vehicle and then made two lane changes with a maximum speed of 45 miles per hour as he crossed to the far left northbound lane and approached the crossover gap.[4] He

[4] Florida Highway Patrol Vehicle/Personnel Crash Investigation Report (FHP Report), 25 (Aug. 29, 2014).

entered the median too quickly to properly negotiate the turn and hit the median barrier at a speed of 20 miles per hour before entering the southbound lane.[5]

Ms. Christeia Jones was traveling in the southbound lane with her three children in the backseat (Logan Grant, 2 years old; Lanard Maybin, 5 years old; and Denard Maybin, Jr., 7 years old).

Once entering the southbound lane at nine miles an hour, Trooper Umana's vehicle struck the 2014 Nissan Altima driven by Ms. Jones as well as a Mercedes traveling behind Ms. Jones. Ms. Jones had been traveling at 88 miles per hour, applied brakes and steered right (away from Trooper Umana's vehicle) and was traveling at 62 miles per hour at the time of impact with Trooper Umana's vehicle.[6]

After being struck by Trooper Umana's vehicle and applying brakes, Ms. Jones's Altima slowed to 16.94 miles an hour, and remained in the traveling lanes 179.5 feet from the initial collision.[7] A tractor-trailer truck then collided with the Mercedes immediately behind Ms. Jones's vehicle; and then the tractor-trailer truck hit Ms. Jones's vehicle while traveling at 69 miles per hour. The collision with the tractor-trailer truck accelerated the speed of Ms. Jones's car to 58.33 miles per hour as her vehicle was pushed toward the shoulder of the highway.[8] After both vehicles left the roadway and Ms. Jones's vehicle rotated 270 degrees, the tractor-trailer truck hit Ms. Jones's vehicle a second time and Ms. Jones's vehicle came to rest after hitting a tree. The engine compartment then caught fire.[9]

Ms. Jones was able to exit the vehicle but emergency personnel had to extract her three children who were trapped inside of the car after the rear seat was crushed by impact from the tractor-trailer truck. The FHP report describes damage to the vehicle in great detail[10] and notes the driver of

[5] *Id*. at 33.
[6] *Id*. at 25.
[7] *Id*. at 27.
[8] *Id*.
[9] *Id*. at 28.
[10] *Id*. at 15. The report includes a description of the extensive crushing and damage to the back of the vehicle. "The rear center and left headrest [were] crushed forward to the back of the driver's seat. The front right seat was twisted to the left by the back seat." *Id*. at 16.

the tractor trailer did not fully apply the brakes until after colliding with the Mercedes, which was inconsistent with a statement made by the driver during the investigation.[11]

FHP Report
The FHP report noted no known distractions, adverse weather conditions, or evasive actions that would have contributed to the causation of the crash.[12]

Restraints
The FHP report provides both Lanard (5) and Denard (7) were "unrestrained at the time of the crash and suffered critical injuries," and Logan (2) was restrained in a forward facing child seat and suffered critical injuries as a result of the incident.[13]

Ms. Jones confirmed Logan (2) was secured in a forward facing car seat; however, she testified both Lanard (5) and Denard (7) were wearing seatbelts when they began the ride.[14] Additionally, the FHP report includes information from Ms. Jones's grandmother, Marilyn Lilly, who told the investigating officer the two older boys were wearing seatbelts when Ms. Jones left her house.[15] Ms. Jones does not have knowledge of the boys unbuckling themselves during the course of the ride.[16]

Counsel for claimants indicated there was no expert testimony presented suggesting the seatbelts would have made a difference for Lanard and Denard. Counsel noted the one child who was restrained, Logan, was the most severely injured. Counsel suggested if seatbelts were not used by the two older boys–not wearing the belts may have saved their lives.[17]

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[11] *Id*. at 28.
[12] *Id*. at 5.
[13] *Id*. at 6-7. "The rear left and center seatbelts were locked in the retracted position. The rear right seat belt appeared to have been cut in two places. The child restraint seat was cracked and the metal seatbelt clip was bent." *Id*. at 16.
[14] Deposition, Christeia Jones, 87 (Jan. 18, 2018); Deposition, Trooper Crocker 7:20–7:30.
[15] FHP Report at 22.
[16] Special Master Hearing at 3:28:43-3:29:45.
[17] *Id*. at 14:45-15:58.

Speed

The posted speed limit of the highway where the incident occurred was 70 miles per hour.[18] Information gathered during the FHP's investigation demonstrated Ms. Jones was driving at a speed exceeding the limits and made efforts to slow down just before impact with Trooper Umana's vehicle.

FHP investigators were able to obtain information from the event data recorder in Ms. Jones's vehicle. Prior to Trooper Umana's vehicle hitting Ms. Jones's vehicle, Ms. Jones was traveling at 88 miles per hour; which counsel for the claimants noted as going with the flow of traffic.[19] The FHP report indicates about 1.5-2 seconds prior to impact, speed was reduced to 86 miles per hour. By one second before impact, Ms. Jones was traveling at 79 miles per hour; .5 second before impact, she was traveling at 69 miles per hour; and, at impact, she was traveling at 62 miles per hour.[20]

Medical Injuries

Ms. Jones is not seeking relief for herself through the claim bill. She seeks relief only for her children. Information regarding injuries to the three children was provided at the special master hearing. The submitted information includes evaluations, for each child, by medical professionals, vocational rehabilitation, and life care planning professionals.

Logan Grant

Logan suffered from a severe traumatic brain injury, orbital fractures, lung contusions, and a left subdural hematoma in his brain. He was hospitalized at UF Health Shands Hospital for a month before going to a rehabilitation hospital for another two weeks.[21]

As of November 2017, Logan could walk on his own with fewer falls when wearing a brace on one foot; fatigued easily; was able to dress himself if clothing did not have fasteners; had limited strength and coordination with his left hand; and

[18] FHP Report at 5.
[19] Special Master Hearing at 51:20-51:30. *See also* FHP Report at 13 (noting none of three witnesses, who were truck drivers, indicated Ms. Jones, the vehicle behind her, nor the tractor-trailer truck were speeding). Counsel for claimants highlighted this information in support of Ms. Jones, who, although speeding, was traveling with the flow of traffic. Special Master hearing at 52:20-:53:06.
[20] FHP Report at 18.
[21] Special Master Hearing at 16:00-16:30; *see* Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 13 -15 (Nov. 22, 2017).

had cognitive-behavioral impairment. He was receiving occupational, physical, speech, and behavioral therapy.[22] The doctor evaluating Logan found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash" and anticipated his deficits are permanent and will require continued multidisciplinary care.[23] The evaluating doctor believes, due to cognitive and communication impairments, Logan is not expected to be able to live alone as an adult, and will require guardianship and attendant care to assist with activities of daily living.[24]

A doctor examining Logan on behalf of the respondent came to similar conclusions with regard to Logan's abilities and future needs. The doctor found Logan had cognitive deficits with regard to executive functioning and his ability to control behaviors, regulate emotions, and stay on task.[25] This doctor also found Logan will likely need some assistance in making major life and financial decisions; and he is likely to be able to perform labor-oriented work.[26]

A doctor hired by the claimants conducted a vocational rehabilitation evaluation, which included the finding that he "will not be capable of securing and maintaining competitive employment."[27] The doctor found it reasonable to assume he would have previously been capable of graduating from high school and earning a college degree.[28] The same doctor, in coordination with others, evaluated Logan's needs and developed a life care plan.[29] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs which are identified later in this report.

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[22] Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 8-10 (Nov. 22, 2017).
[23] *Id*. at 14.
[24] *Id*. at 15.
[25] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Logan Grant, 9 (Aug. 23, 2018).
[26] *Id*. at 10.
[27] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Logan Eduardo Grant, 30 (June 25, 2018). This finding is based upon a reasonable degree of vocational rehabilitation probability. *Id*. *But see* Kelderman, Ph.D. ABPP, Jill, Pediatric Neuropsychological Evaluation, 10 (Aug. 23, 2018) (concluding Logan will likely need some level of supervision throughout adulthood with regard to major life and financial decisions but noting he is likely to be able to work labor-related jobs).
[28] *Id*. at 31.
[29] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Logan Eduardo Grant (Aug. 2, 2018).

Lanard Maybin

Lanard, who was found in the front of the car under the dashboard, suffered facial lacerations, a left shoulder fracture, a major neurocognitive disorder and behavioral disturbance related to a traumatic brain injury, attention deficit disorder related to traumatic brain injury, and possible post-traumatic stress disorder.[30]

In September 2019, a doctor providing an opinion about Lanard's functional status and needs noted his "level of function and quality of life has markedly diminished" as a result of his injuries. The doctor also noted ongoing neurocognitive and behavioral impairments that impact daily life at home and in school, which will require ongoing multidisciplinary care. The doctor believes these impairments will negatively impact Lanard's future vocational potential and his level of independence; however, the doctor is not certain if Lanard will be able to achieve gainful employment in the competitive job market or live alone as an adult.[31]

In 2019, a doctor conducted a vocational rehabilitation evaluation of Lanard. In reviewing medical records, the doctor noted neuropsychological diagnoses of 1) a major cognitive disorder likely from traumatic brain injury with behavior disturbance; 2) post-traumatic stress disorder; and 3) nocturnal enuresis. Additionally, Lanard indicated difficulty focusing and has ongoing nightmares and accident-related thoughts. His facial scarring is described as "prominent."[32] The same doctor, in coordination with others, evaluated Lanard's needs and developed a life care plan.[33] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

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[30] Kornberg, M.D., Paul, Comprehensive Medical Evaluation of Lanard Maybin, 11 (Sept. 11, 2019); Shands at the University of Florida, Department of Pediatric Surgery Discharge Note Re: Lanard Maybin (May 23, 2014).
[31] Kornberg at 11.
[32] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Lanard Maybin, 26 (Aug. 14, 2019).
[33] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Lanard Maybin (Nov. 4, 2019). During his testimony at the special master hearing, Dr. Shanasarian indicated one needed change to page 19 of his original report. He noted it should read, "to be determined" as to whether Lanard would require a live-in personal care attendant after the age of 22. *See* Shanasarian, Life Care Plan Prepared for Lanard Maybin (Oct. 18, 2019). The correction was at the request of Dr. Gorman, a neuropsychologist, who could not state, with probability, the ongoing need beyond age 21. Special Master Hearing at 1:29:40-1:30:06. Counsel for claimants submitted a revised life care plan and a revised economic loss analysis report regarding Lanard in November of 2019, as cited above.

Denard Maybin

Denard suffered from a traumatic brain injury, right subdural hematoma, and diffuse axonal injury. [34] A 2015 follow-up MRI showed scarring and shrinking of the brain in some areas; and an old hemorrhage in the bilateral front lobes (which are responsible for executive functioning and emotional regulation).[35]

In 2017, a doctor evaluated Denard for the purpose of providing an opinion about his functional status and future needs. The doctor found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash."[36] The evaluation noted mild right lower extremity weakness with motor perceptual, communication, and cognitive impairments, which are anticipated to be permanent.[37] As a result of cognitive and functional impairments, the evaluating doctor believes Denard will require ongoing multidisciplinary care and is not expected to attain gainful employment in the competitive job market.[38]

A doctor examining Denard on behalf of the respondent found Denard has "significant weaknesses" with regard to executive functioning, "remarkable deficits" with regard to organization, "significant difficulties with fine motor skills," as well as visual-spatial deficits.[39] With regard to Denard's abilities and future needs, the doctor found Denard is unlikely to attain a standard high school diploma and notes he will likely require some level of assistance and supervision with major life and financial decisions.[40] However, he is "unlikely to require a personal care attendant as he will be able to care for his personal needs."[41] This doctor also believes Denard will be able to perform labor-oriented work.[42]

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[34] Special Master Hearing at 16:32-16:58; *see* Kornberg, M.D., Paul B, Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation–Denard Maybin, 2-3 (Nov. 22, 2017).
[35] Kornberg at 6; *see* Special Master Hearing at 2:19:00-2:20:45.
[36] Kornberg at 12.
[37] *Id*. at 12.
[38] *Id*. at 12; *see also* Shahnasarian, Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[39] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Denard Maybin, Jr., 9 (Aug. 22, 2018).
[40] *Id*. at 10.
[41] *Id*. at 10. This is notable as the life care plan and costs of future life care needs includes the cost of a live-in personal care attend with a present value cost of $4,195,226; as well as an item listed as "additional cost for live-in care," which has a present value of $208,692. Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Maybin, Jr., Denard vs. Florida Highway Patrol, Table 2 (Oct. 31, 2018).
[42] Kelderman at 10.

In 2018, a doctor provided a vocational rehabilitation evaluation for Denard as requested by the claimants.[43] The doctor's findings included academic and medical difficulties since the accident, and multifaceted neuropsychological difficulties. These difficulties include reasoning ability, memory, processing speed, motor skills, emotional disturbance, and anxiety among other findings.[44] The doctor concluded Denard is not likely to be capable of attaining competitive employment.[45]

The same doctor, in coordination with others, evaluated Denard's needs and developed a life care plan.[46] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

Caretaking
Ms. Jones is the primary caretaker for Logan, Lanard, and Denard and takes them to all of their appointments. She testified she takes them to speech, physical, and occupational therapy appointments two days a week (2-3 hours each of those days). In addition, she takes them to appointments with specialists and their primary care physician. Ms. Jones works as a substitute teacher 1-3 days a week (depending upon appointments), which allows her to have a schedule flexible enough to get her children to their doctors and therapists. She would like to work fulltime using her bachelor's in criminal justice and seek a master's and a law degree.[47]

Estimated Economic Losses
Claimants submitted economic loss analyses[48] with regard to the children based upon medical assessments and expected needs and limitations.

[43] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[44] *Id*.
[45] *Id*.
[46] Shahnasarian, Ph.D., Michael, Life Care Plan Prepared for Denard Maybin (July 5, 2018).
[47] Special Master Hearing at 3:15:09-3:18:10. Ms. Jones testified about her worries for her children as well as her desire to make sure they are healthy and prepare them as much as possible to live without her. *Id*. at 3:31:30-3:32:00 and 3:38:50-3:39:00.
[48] *See* Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Mr. Lanard Maybin 2nd Revised Report (Nov. 7, 2019); Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Grant, Logan vs. Florida Highway Patrol Report (Nov. 2, 2018); Raffa, Economic Loss Analysis Re: Denard.

The estimated economic losses with regard to future earning capacities in different scenarios were as follows:

Earning Capacity: Assuming Pre-Incident Employment with No Further Degree Beyond High School	
	Present Value
Logan	$1,543,014
Lanard	$1,690,822
Denard	$1,592,738

Earning Capacity: Assuming Pre-Incident Employment and Additional Schooling	
	Present Value
Logan (with a bachelor's degree)	$2,810,754
Lanard (with technical school training)	$1,834,473
Denard (with a bachelor's degree)	$2,906,356

The estimated cost of future life care needs for each child is as follows:

Cost of Future Life Care Needs	
	Present Value
Logan[49]	$6,702,555 or $6,738,094
Lanard[50]	$2,126,572
Denard[51]	$5,818,550

In summary, the estimated economic loss and cost of future care at present value[52] for each child is as follows:

- Logan $8,245,569–$9,548,848
- Lanard $3,817,394–$3,961,045
- Denard[53] $7,411,288–$8,724,906

[49] Two options were listed for Logan's Life Care Plan depending upon what is used to assist him with ambulating (Option I: Walkaide and Options 2: Bioness L300).
[50] The values for Lanard include adjusting for the correction to the life care plan evaluation (indicating the need for a live-in attendant after the age of 21 is yet to be determined by professionals).
[51] If the medical opinion of the respondent's evaluating doctor is applied (that Denard will not require live-in care), the values for Denard's future life care needs would likely be reduced by the values listed for a live-in care attendant ($4,195,226) and "additional cost for live-in care" ($208,692). If he no longer required housekeeping, that would further reduce his future life care needs by $70,761. *See* Raffa Economic Loss Analysis Re: Denard at Table 2.
[52] Raffa Economic Loss Analysis Re: Logan at Tables 3A and 3B; Raffa 2nd Revised Economic Loss Analysis Re: Lanard at Tables 3A and 3B; and Raffa Economic Loss Analysis Re: Denard at Tables 3A and 3B.
[53] *See supra* n. 48.

Combined, the estimated economic loss ranges for all three children is $19,474,251–$22,234,799.[54]

Trooper Raul Umana

During a deposition related to this matter, Trooper Umana stated he was going to pull into the median and wait until it was safe to turn around; however, he admitted he approached too quickly. He said his "lack of experience there really kicked in."[55] He said "there was too close of [a] range for me to get across and turn around."[56] Trooper Umana agreed it was part of his training to turn around in the safest area.[57] Although he did not know the speed at which he entered the median, his opinion was it "was too fast."[58]

The FHP report indicates Trooper Umana received a traffic citation for careless driving pursuant to section 316.1935, of the Florida Statutes,[59] which he states he paid.[60] He did not receive any discipline from FHP.[61]

Other Vehicles Involved in Incident

In addition to Trooper Umana's and Ms. Jones's vehicles, there were two other vehicles involved in this incident. There was a vehicle directly behind Ms. Jones's vehicle involved, as well as a tractor-trailer truck.

The Vehicle Behind Ms. Jones's Vehicle

The vehicle behind Ms. Jones, according to the FHP report, was following too closely behind her.[62] Although this vehicle did not come into contact with Ms. Jones's vehicle, the insurer of this vehicle opted to provide $20,000 in a settlement agreement.

The Tractor-Trailer Truck

Two possible issues arose with regard to the tractor-trailer truck. The first potential issue was with regard to speed. Although the tractor-trailer truck did not have a recording of

[54] Although respondent's doctor does not believe Denard will require live-in care after the age of 21, these amounts include such live-in care.
[55] Trooper Raul Umana, Deposition, 22 lines 19–12 (July 17, 2017).
[56] *Id*. at 22 line 25–23 line 5.
[57] *Id*. at 26 lines 1–4.
[58] *Id*. at 32 lines 6–11.
[59] FHP Report at 59.
[60] Trooper Raul Umana, Deposition, 53 lines 17–20.
[61] *Id*. at 53 line 14–54 line 10 (July 17, 2017).
[62] FHP Report at 26.

data like Ms. Jones's Altima had, a responding trooper originally noted the driver of the tractor-trailer truck was following too closely because the driver had stated he did not have time to react after vehicles in front of him were involved in the initial crash.[63] The significant damage to the back of Ms. Jones's vehicle, which crushed the back seat where her children were located, was from impact of the tractor-trailer truck. The second potential issue was with regard to the driver's time on duty and whether he exceeded the limit regarding driving hours.[64] Evidence was not submitted to confirm whether the driver of the tractor-trailer truck had been following too closely or driving for too many hours at the time of the crash.

Litigation History and Settlement

Two cases were filed by Ms. Jones in Orange County seeking relief as a result of this incident. One case was filed by Ms. Jones on behalf of her three children[65]; and the other was filed regarding Ms. Jones's personal injury claims.[66] Prior to trial, the parties arrived at a mediated settlement agreement[67] and both cases were subsequently closed.

Settlement

Counsel for claimants believed the potential jury verdict value of this matter would be $40-50 million.[68] The mediated settlement agreement notes claimants and respondent (FHP) acknowledged "a jury could reasonably award damages to the minor Plaintiffs in the amount of [$18 million]."[69] Counsel for the claimants stated the settlement amount was less than the amount claimants believe is the full value because of issues relating to speed and whether the use of seatbelts would have been of concern for a jury. Counsel noted there was no information suggesting Ms. Jones could have avoided the incident, but conceded the issue of the seatbelts could have affected a jury's verdict.[70]

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[63] Sworn Audio Statement, Trooper Shawn Crocker, 13:30-13:59 (June 9, 2014).
[64] Special Master Hearing at 1:06:20-1:07:06.
[65] Jones on behalf of Grant, et al. v. Fla Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.).
[66] Jones v. Fla. Highway Patrol, Case No. 2018-CA-004258-O (Fla. 9th Circ. Ct.).
[67] Special Master Hearing at 16:59-17:25.
[68] *Id*. at 20:22-20:37.
[69] Mediation Settlement Agreement, Jones on behalf of Grant, et al. v. Fla. Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.), 2 (Nov. 30, 2018); Special Master Hearing at 4:02:30-4:03:56.
[70] Special Master hearing at 21:00-21:54.

The respondent did not admit liability or responsibility for the incident but did reach a mediated settlement agreement of $18,000,000.[71] 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.[72]

Funds Received by Claimants

Pursuant to settlement agreements, claimants have received funds from FHP, the insurer of the tractor-trailer truck, and the insurer of the Mercedes.

Respondent's Payment Pursuant to the Statutory Cap

The claimants received the remaining amount ($285,000)[73] of the respondent's statutory limit ($300,000 per incident) from the Division of Risk Management and seek the remaining balance of the settlement ($17,715,000) through this claim bill. From payment of the limit, claimants' net proceeds were $142,999.14, and the following disbursements were made[74]:

- Christeia Jones $49,999.14
- Logan Grant Special Needs Trust (SNT) $25,000.00
- Denard Maybin, Jr. SNT $25,000.00
- Lanard Maybin SNT $50,000.00

Settlement Funds from other Insurance Policies

In addition to the respondent's payment, the children received funds from settlements with insurers of two other vehicles involved in the accident.[75]

Each of the children recovered funds from the tractor-trailer truck's insurance company, and Ms. Jones recovered a portion of each of those amounts, as well. The total recovery from the tractor-trailer truck's insurance company was $965,984.33. After payment of attorney fees and costs and liens, the distributions were as follows:

- Christeia Jones $15,000
- Logan Grant SNT $185,031.80

[71] Order on Petition for Approval of Personal Injury Settlement of Minors Logan Grant, Denard Maybin, Jr., and Lanard Maybin, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.) (June 24, 2019).
[72] Mediation Settlement Agreement at 2.
[73] The first $15,000 of respondent's limit went to the driver of the tractor-trailer truck. Correspondence from Kenneth McKenna, Attorney for Claimants (Nov. 12, 2019).
[74] Closing Statement, Recovery from FHP (June 27, 2018); *see* Affidavit of Attorney for Claimants Attorney (Oct. 16, 2019).
[75] Affidavit of Attorney for Claimants at 2.

(from total recovery of $482,992.17)

- Denard Maybin, Jr. SNT $154,191.15
  (from total recovery of $386,393.73)
- Lanard Maybin SNT $41,535.42
  (from total recovery of $96,598.43)

Claimants recovered $20,000 from an insurer of the Mercedes traveling behind Ms. Jones that was involved in the incident. From this settlement, proceeds to claimants totaled $5,644.22, which was distributed as follows:

- Logan Grant SNT $1,881.41
- Denard Maybin, Jr. SNT $1,881.41
- Lanard Maybin SNT $1,881.40

Balance of Each Child's Special Needs Trust

As of fall 2019, the balance of each child's special needs trust is as follows[76]:

- Logan Grant SNT $205,368.83
- Denard Maybin, Jr. SNT $170,415.51
- Lanard Maybin SNT $80,817.50

Liens

Florida Medicaid had asserted liens on each claimant though HMS/Conduent, which have been paid in full.[77]

WellCare has asserted a lien of $49,767.42 regarding Logan Grant; $22,869.40 on Denard Maybin, Jr.; and $8,485.71 on Lanard Maybin.[78] Counsel for claimants indicated funds are being held in trust for payment of these liens; however, there is disagreement with regard to how much is to be paid.[79]

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all

[76] Information is as of September 12, 2019 for all accounts.
[77] First Updated Affidavit of Attorney for Claimants, 2 (Nov. 12, 2019).
[78] Affidavit of Attorney for Claimants at 3. Special Master Hearing at 2:50:30-2:54:30.
[79] First Updated Affidavit of Attorney for Claimants, 3 (Nov. 12, 2019).

claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

In this matter, the claimants allege negligence on behalf of Trooper Umana. The State is liable for a negligent act committed by an employee acting within the scope of employment. Trooper Umana was operating his patrol vehicle while on duty and was within the scope of his employment with Florida Highway Patrol (a division of the Department of Highway Safety and Motor Vehicles). Therefore, his employer, ultimately the State, is liable for negligent acts committed by him pursuant to the statutory sovereign immunity waiver.

Negligence

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.[80]

Duty

Statute and case law describe the duty of care placed upon motorists. Florida's statute regarding careless driving provides:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.[81]

Case law provides motorists have a duty to use reasonable care to avoid accidents and injury to themselves and others.[82] The driver of an automobile, a "dangerous instrumentality," is responsible for maintaining control of the vehicle, commensurate with the setting, and being "prepared to meet

[80] Williams v. Davis, 974 So.2d 1052, at 1056–1057 (Fla. 2007).
[81] Section 316.1925(1), Fla. Stat.
[82] Nelson v. Ziegler, 89 So.2d 780, 783 (Fla. 1956).

the exigencies of an emergency within reason and consistent with reasonable care and caution."[83]

Breach
The undersigned finds Trooper Umana breached the duties described above when he approached the median too quickly, as he admitted himself, and attempted to turn around in the center median.

Causation
Trooper Umana's breach of duty in approaching the median too quickly caused him to hit the guardrail and travel into oncoming traffic where he made impact with other vehicles, including the Jones's Altima. The collision with Trooper Umana's vehicle pushed the Jones's vehicle into the path of the tractor-trailer truck traveling in the middle lane. Impact with the tractor-trailer truck caused significant damage to the back of the vehicle and injured the children in the backseat.

Case law provides, when injury results "directly and in ordinary natural sequence from a negligent act without the intervention of any independent efficient cause," where the sequence "should be regarded as a probable, not a mere possible, result of the negligent act, [the injured person] is entitled to recover damages as compensation."[84] The undersigned finds it probable, not merely possible, the Jones's vehicle would be hit by another vehicle after being hit by Trooper Umana's vehicle on a three-lane highway. The damages sustained by the Joneses are the natural result of the sequence of events set in motion by Trooper Umana.

Damages
As a result of the collision, doctors indicated all three children suffered traumatic brain injuries as well as the medical injuries previously described in this report. The total amount of damages provided by claimant's economic analyst is $19,474,251–$22,234,799.

As noted previously, the doctor examining the children for the respondent does not believe Denard will require live-in assistance. If Denard does not require live-in care after the age of 21, the economic loss for him may be significantly

[83] Nelson, 89 So.2d at 783.
[84] Loftin et al. v. McCrainie, 47 So.2d 298, 301 (Fla. 1950).

reduced. However, claimants' experts provide Denard will need such care and have calculated live-in care into the economic loss analysis. Given the claimants' submissions from various experts collaborating to create the life care plan, the undersigned finds the preponderance of evidence demonstrates Denard's estimated future need of live-in care should remain in the calculation.

Respondent and claimants agreed a jury could have awarded $18,000,000 to the children and settled for that amount–which is less than the calculations provided by the economic analyses.

Comparative Negligence

Comparative negligence "involves the apportionment of the loss among those whose fault contributed to the occurrence" and a claimant cannot recover damages for the percentage of fault for which she is liable. [85]

Ms. Jones

In this matter, Ms. Jones was exceeding the speed limit by traveling at 88 miles per hour on a highway with a 70 mile per hour speed limit; and two of the children were unbuckled when emergency responders found them.

With regard to Ms. Jones's speed, claimants' counsel did not provide argument of negligence on behalf of Ms. Jones for which damages apportioned to the respondent should be reduced, and respondent remained silent pursuant to the settlement agreement. The data recorder clearly provides evidence Ms. Jones had breached her duty to drive the speed limit. However, information was not provided demonstrating her speed specifically contributed to the causation of the damages suffered.

With regard to seatbelts, "a claim that a plaintiff failed to wear a seat belt and that such failure was a contributing cause of plaintiff's damages should be raised as an affirmative defense of comparative negligence."[86] Testimony and information (provided by Ms. Jones and her grandmother) was consistent that Ms. Jones had buckled her three children, as well as herself, before she started

[85] Hoffman v. Jones, 280 So.2d 431, 436 (Fla. 1973).
[86] Ridely v. Safety Kleen Corp., 693 So.2d 934, 935 (Fla. 1996).

driving. Ms. Jones also indicated she did not have knowledge of the children unbuckling themselves; however, Lenard and Denard were both found unbuckled by first responders. Regardless of how the children were unbuckled, a comparative negligence defense would also require demonstration that the breach of a duty contributed to the damages sustained. Here, counsel for claimants argued if Lenard and Denard were unbuckled–it may have saved their lives.

Given the information she had buckled the children before driving; did not have knowledge of the children unbuckling themselves if or when they did; the argument they would have sustained greater injuries if they remained restrained to the back seat which had extensive crush damage (thereby more than likely not contributing to damages); and no argument from respondent with regard to a comparative negligence defense–no contributory[87] negligence has been demonstrated.

Driver of the Tractor-Trailer Truck
Similarly, although counsel for claimants mentioned there may have been issues explored with regard to the driver of the tractor-trailer truck (potentially exceeding hours he was allowed to work and a trooper noting the driver may have been speeding) there was no demonstration of the elements required to find comparative negligence on behalf of the tractor-trailer truck driver. The only information provided regarding hours of driving was in the FHP report, which indicated five violations in eight days but stated "these violations alone are not likely to cause a fatigue factor."[88] General information regarding speed of the truck indicates the driver recalled traveling at 65 miles per hour at the time of the incident and that the truck was traveling between 60 and 80 miles per hour 69% of the time.

Ms. Jones's vehicle sustained the most significant damage from impact with the tractor-trailer truck. If more information were available regarding potential comparative negligence on behalf of the truck driver, it is possible the respondent's responsibility for damages would be reduced; however,

[87] *See* Section 768.81(2), Fla. Stat., describing contributory fault and its effect as "fault chargeable to the claimant [which] diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."
[88] FHP Report at 15.

further information to find comparative negligence on behalf of the tractor-trailer truck driver was not presented by claimants and the respondent remained silent but acknowledged such issues of comparative negligence had been explored.

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Counsel for the claimants indicated attorney fees will be 20 percent, and lobbying fees will amount to 5 percent, of the total funds awarded through the claim bill.[89]

RECOMMENDATIONS:

Recommended Amendment(s)
Although the settlement agreement resolved Christeia Jones claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[90]

Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[91]

Recommendation on the Merits
The undersigned did not have the benefit of hearing argument from both parties due to the settlement agreement requiring the respondent to remain silent on the claim bill and not support or oppose the bill.[92] Therefore, the above facts, conclusions of law, and recommendations are the result of argument and information provided by counsel for the claimants.

Based upon the information provided before, during, and after the special master hearing, the undersigned finds claimants have demonstrated negligence on behalf of the

[89] Affidavit of Attorney for Claimants at 2 (noting outstanding costs of $15,603.17 with regard to representation of the claimants).
[90] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[91] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).
[92] Special Master Hearing at 22:13-22:18.

respondent and the amount sought is reasonable when compared to analyses provided by claimants' economist.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2022

I respectfully request that **Senate Bill #70**, relating to Relief of Donna Catalano by the Department of Agriculture and Consumer Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Darryl E Rouson

Senator Darryl Ervin Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
1/19/22	SM	Favorable
1/24/22	JU	Fav/CS
	ATD	
	AP	

January 19, 2022

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

Re: **CS/SB 80** – Judiciary Committee and Senator Baxley
HB 6515 – Representative McClure
Relief of Christeia Jones/Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $17,715,000, BASED ON A MEDIATION SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT, CHRISTEIA JONES, AS PARENT AND NATURAL GUARDIAN OF LOGAN GRANT, DENARD MAYBIN,JR., AND LANARD MAYBIN AND THE FLORIDA HIGHWAY PATROL/FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. THE MEDIATION SETTLEMENT AGREEMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A FLORIDA HIGHWAY PATROL VEHICLE WHICH RESULTED IN A CRASH AND SEVERE INJURIES TO THE CHILDREN.

UPDATE TO PRIOR REPORT

On October 29, 2019, Ms. Christie M. Letarte, serving as Senate Special Master, held a hearing on a previous version of this bill SB 16 (2020). After the hearing, Ms. Letarte issued a report dated February 6, 2020 containing findings of fact and conclusions of law based on argument and information provided before, during, and at the hearing solely by counsel for the claimants, as a litigation settlement agreement required the Florida Highway Patrol, a division of the

Department of Highway Safety and Motor Vehicles, to remain silent on the claim bill and not support or oppose the bill. Ms. Letarte found the amount sought is reasonable when compared to analyses provided by claimants' economist. A copy of that report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendations in the previous report.

The undersigned has received no information to indicate that any such changes have occurred since the hearing. An updated statement dated August 31, 2021 from the Department of Highway Safety and Motor Vehicles (Department) through its General Counsel, identifying the source of payment for the claim bill if approved by the Legislature without an appropriation of additional funds, and describing the impact that the payment might have on the Department's operations, indicates:

> Senate Bill 80 appropriates $17.715M from the General Revenue Fund to the [Department] for the relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin. If this legislation is approved without an appropriation, the Department would have no existing budget authority to pay the claim. The only course of action if no appropriation is approved would be to request budget authority from the General Revenue Funds pursuant to Chapter 216.177, F.S. Should an appropriation be made from the Highway Safety Operating Trust Fund, it would severely and detrimentally limit Department operations, requiring vacant positions to be unfilled in order to have the cash to pay the claim and still meet other operational obligations. This would include all Divisions throughout the Department, including the Florida Highway Patrol and Motorist Services Field Offices providing driver license and motor vehicle services.[1]

[1] E-mail Correspondence from Ms. Christie S. Utt, General Counsel for the Department (Aug. 31, 2021).

RECOMMENDATIONS:

The undersigned concurs in the following Recommendation in the previous report, which are applicable to SB 80:

> Although the settlement agreement resolved Christeia Jones' claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[2]
>
> Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[3]

For the reasons set forth above, the undersigned Senate Special Master recommends that Senate Bill 80 (2022) be reported FAVORABLY.

Respectfully submitted,

Mary K. Kraemer
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary
The CS reduces the appropriation in the bill to $7.5 million.

[2] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[3] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
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DATE	COMM	ACTION
2/6/20	SM	Report Submitted
	JU	
	ATD	
	AP	

February 6, 2020

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 16** – Senator Simmons
HB 6517 – Representative Williamson
Relief of Christeia Jones, Logan Grant, Denard Maybin, Jr., and Lanard Maybin by the Department of Highway Safety and Motor Vehicles

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR GENERAL REVENUE FUNDS IN THE AMOUNT OF $17,715,000. THIS AMOUNT IS THE REMAINING BALANCE OF AN $18,000,000 SETTLEMENT AGREEMENT REGARDING ALLEGED NEGLIGENCE OF TROOPER RAUL UMANA AND THE FLORIDA HIGHWAY PATROL, A DIVISION OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

FINDINGS OF FACT:

The Accident

On May 18, 2014, at approximately 9:25 p.m., Florida Highway Patrol (FHP) Trooper Raul Umana, traveling north on I-75 in a 2007 Crown Victoria patrol vehicle, attempted to turn around using a crossover gap in the median. Trooper Umana had been on the far right shoulder assisting with a disabled vehicle and then made two lane changes with a maximum speed of 45 miles per hour as he crossed to the far left northbound lane and approached the crossover gap.[4] He

[4] Florida Highway Patrol Vehicle/Personnel Crash Investigation Report (FHP Report), 25 (Aug. 29, 2014).

entered the median too quickly to properly negotiate the turn and hit the median barrier at a speed of 20 miles per hour before entering the southbound lane.[5]

Ms. Christeia Jones was traveling in the southbound lane with her three children in the backseat (Logan Grant, 2 years old; Lanard Maybin, 5 years old; and Denard Maybin, Jr., 7 years old).

Once entering the southbound lane at nine miles an hour, Trooper Umana's vehicle struck the 2014 Nissan Altima driven by Ms. Jones as well as a Mercedes traveling behind Ms. Jones. Ms. Jones had been traveling at 88 miles per hour, applied brakes and steered right (away from Trooper Umana's vehicle) and was traveling at 62 miles per hour at the time of impact with Trooper Umana's vehicle.[6]

After being struck by Trooper Umana's vehicle and applying brakes, Ms. Jones's Altima slowed to 16.94 miles an hour, and remained in the traveling lanes 179.5 feet from the initial collision.[7] A tractor-trailer truck then collided with the Mercedes immediately behind Ms. Jones's vehicle; and then the tractor-trailer truck hit Ms. Jones's vehicle while traveling at 69 miles per hour. The collision with the tractor-trailer truck accelerated the speed of Ms. Jones's car to 58.33 miles per hour as her vehicle was pushed toward the shoulder of the highway.[8] After both vehicles left the roadway and Ms. Jones's vehicle rotated 270 degrees, the tractor-trailer truck hit Ms. Jones's vehicle a second time and Ms. Jones's vehicle came to rest after hitting a tree. The engine compartment then caught fire.[9]

Ms. Jones was able to exit the vehicle but emergency personnel had to extract her three children who were trapped inside of the car after the rear seat was crushed by impact from the tractor-trailer truck. The FHP report describes damage to the vehicle in great detail[10] and notes the driver of

[5] *Id*. at 33.
[6] *Id*. at 25.
[7] *Id*. at 27.
[8] *Id*.
[9] *Id*. at 28.
[10] *Id*. at 15. The report includes a description of the extensive crushing and damage to the back of the vehicle. "The rear center and left headrest [were] crushed forward to the back of the driver's seat. The front right seat was twisted to the left by the back seat." *Id*. at 16.

the tractor trailer did not fully apply the brakes until after colliding with the Mercedes, which was inconsistent with a statement made by the driver during the investigation.[11]

FHP Report
The FHP report noted no known distractions, adverse weather conditions, or evasive actions that would have contributed to the causation of the crash.[12]

Restraints
The FHP report provides both Lanard (5) and Denard (7) were "unrestrained at the time of the crash and suffered critical injuries," and Logan (2) was restrained in a forward facing child seat and suffered critical injuries as a result of the incident.[13]

Ms. Jones confirmed Logan (2) was secured in a forward facing car seat; however, she testified both Lanard (5) and Denard (7) were wearing seatbelts when they began the ride.[14] Additionally, the FHP report includes information from Ms. Jones's grandmother, Marilyn Lilly, who told the investigating officer the two older boys were wearing seatbelts when Ms. Jones left her house.[15] Ms. Jones does not have knowledge of the boys unbuckling themselves during the course of the ride.[16]

Counsel for claimants indicated there was no expert testimony presented suggesting the seatbelts would have made a difference for Lanard and Denard. Counsel noted the one child who was restrained, Logan, was the most severely injured. Counsel suggested if seatbelts were not used by the two older boys–not wearing the belts may have saved their lives.[17]

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[11] *Id*. at 28.
[12] *Id*. at 5.
[13] *Id*. at 6-7. "The rear left and center seatbelts were locked in the retracted position. The rear right seat belt appeared to have been cut in two places. The child restraint seat was cracked and the metal seatbelt clip was bent." *Id*. at 16.
[14] Deposition, Christeia Jones, 87 (Jan. 18, 2018); Deposition, Trooper Crocker 7:20–7:30.
[15] FHP Report at 22.
[16] Special Master Hearing at 3:28:43-3:29:45.
[17] *Id*. at 14:45-15:58.

Speed

The posted speed limit of the highway where the incident occurred was 70 miles per hour.[18] Information gathered during the FHP's investigation demonstrated Ms. Jones was driving at a speed exceeding the limits and made efforts to slow down just before impact with Trooper Umana's vehicle.

FHP investigators were able to obtain information from the event data recorder in Ms. Jones's vehicle. Prior to Trooper Umana's vehicle hitting Ms. Jones's vehicle, Ms. Jones was traveling at 88 miles per hour; which counsel for the claimants noted as going with the flow of traffic.[19] The FHP report indicates about 1.5-2 seconds prior to impact, speed was reduced to 86 miles per hour. By one second before impact, Ms. Jones was traveling at 79 miles per hour; .5 second before impact, she was traveling at 69 miles per hour; and, at impact, she was traveling at 62 miles per hour.[20]

Medical Injuries

Ms. Jones is not seeking relief for herself through the claim bill. She seeks relief only for her children. Information regarding injuries to the three children was provided at the special master hearing. The submitted information includes evaluations, for each child, by medical professionals, vocational rehabilitation, and life care planning professionals.

Logan Grant

Logan suffered from a severe traumatic brain injury, orbital fractures, lung contusions, and a left subdural hematoma in his brain. He was hospitalized at UF Health Shands Hospital for a month before going to a rehabilitation hospital for another two weeks.[21]

As of November 2017, Logan could walk on his own with fewer falls when wearing a brace on one foot; fatigued easily; was able to dress himself if clothing did not have fasteners; had limited strength and coordination with his left hand; and

[18] FHP Report at 5.
[19] Special Master Hearing at 51:20-51:30. *See also* FHP Report at 13 (noting none of three witnesses, who were truck drivers, indicated Ms. Jones, the vehicle behind her, nor the tractor-trailer truck were speeding). Counsel for claimants highlighted this information in support of Ms. Jones, who, although speeding, was traveling with the flow of traffic. Special Master hearing at 52:20-:53:06.
[20] FHP Report at 18.
[21] Special Master Hearing at 16:00-16:30; *see* Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 13 -15 (Nov. 22, 2017).

had cognitive-behavioral impairment. He was receiving occupational, physical, speech, and behavioral therapy.[22] The doctor evaluating Logan found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash" and anticipated his deficits are permanent and will require continued multidisciplinary care.[23] The evaluating doctor believes, due to cognitive and communication impairments, Logan is not expected to be able to live alone as an adult, and will require guardianship and attendant care to assist with activities of daily living.[24]

A doctor examining Logan on behalf of the respondent came to similar conclusions with regard to Logan's abilities and future needs. The doctor found Logan had cognitive deficits with regard to executive functioning and his ability to control behaviors, regulate emotions, and stay on task.[25] This doctor also found Logan will likely need some assistance in making major life and financial decisions; and he is likely to be able to perform labor-oriented work.[26]

A doctor hired by the claimants conducted a vocational rehabilitation evaluation, which included the finding that he "will not be capable of securing and maintaining competitive employment."[27] The doctor found it reasonable to assume he would have previously been capable of graduating from high school and earning a college degree.[28] The same doctor, in coordination with others, evaluated Logan's needs and developed a life care plan.[29] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs which are identified later in this report.

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[22] Kornberg, MD, Paul B., Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation, 8-10 (Nov. 22, 2017).
[23] *Id*. at 14.
[24] *Id*. at 15.
[25] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Logan Grant, 9 (Aug. 23, 2018).
[26] *Id*. at 10.
[27] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Logan Eduardo Grant, 30 (June 25, 2018). This finding is based upon a reasonable degree of vocational rehabilitation probability. *Id*. *But see* Kelderman, Ph.D. ABPP, Jill, Pediatric Neuropsychological Evaluation, 10 (Aug. 23, 2018) (concluding Logan will likely need some level of supervision throughout adulthood with regard to major life and financial decisions but noting he is likely to be able to work labor-related jobs).
[28] *Id*. at 31.
[29] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Logan Eduardo Grant (Aug. 2, 2018).

Lanard Maybin

Lanard, who was found in the front of the car under the dashboard, suffered facial lacerations, a left shoulder fracture, a major neurocognitive disorder and behavioral disturbance related to a traumatic brain injury, attention deficit disorder related to traumatic brain injury, and possible post-traumatic stress disorder.[30]

In September 2019, a doctor providing an opinion about Lanard's functional status and needs noted his "level of function and quality of life has markedly diminished" as a result of his injuries. The doctor also noted ongoing neurocognitive and behavioral impairments that impact daily life at home and in school, which will require ongoing multidisciplinary care. The doctor believes these impairments will negatively impact Lanard's future vocational potential and his level of independence; however, the doctor is not certain if Lanard will be able to achieve gainful employment in the competitive job market or live alone as an adult.[31]

In 2019, a doctor conducted a vocational rehabilitation evaluation of Lanard. In reviewing medical records, the doctor noted neuropsychological diagnoses of 1) a major cognitive disorder likely from traumatic brain injury with behavior disturbance; 2) post-traumatic stress disorder; and 3) nocturnal enuresis. Additionally, Lanard indicated difficulty focusing and has ongoing nightmares and accident-related thoughts. His facial scarring is described as "prominent."[32] The same doctor, in coordination with others, evaluated Lanard's needs and developed a life care plan.[33] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

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[30] Kornberg, M.D., Paul, Comprehensive Medical Evaluation of Lanard Maybin, 11 (Sept. 11, 2019); Shands at the University of Florida, Department of Pediatric Surgery Discharge Note Re: Lanard Maybin (May 23, 2014).
[31] Kornberg at 11.
[32] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation of Lanard Maybin, 26 (Aug. 14, 2019).
[33] Shahnasarian, Ph.D., Michael, 1st Update–Life Care Plan Prepared for Lanard Maybin (Nov. 4, 2019). During his testimony at the special master hearing, Dr. Shanasarian indicated one needed change to page 19 of his original report. He noted it should read, "to be determined" as to whether Lanard would require a live-in personal care attendant after the age of 22. *See* Shanasarian, Life Care Plan Prepared for Lanard Maybin (Oct. 18, 2019). The correction was at the request of Dr. Gorman, a neuropsychologist, who could not state, with probability, the ongoing need beyond age 21. Special Master Hearing at 1:29:40-1:30:06. Counsel for claimants submitted a revised life care plan and a revised economic loss analysis report regarding Lanard in November of 2019, as cited above.

Denard Maybin

Denard suffered from a traumatic brain injury, right subdural hematoma, and diffuse axonal injury. [34] A 2015 follow-up MRI showed scarring and shrinking of the brain in some areas; and an old hemorrhage in the bilateral front lobes (which are responsible for executive functioning and emotional regulation).[35]

In 2017, a doctor evaluated Denard for the purpose of providing an opinion about his functional status and future needs. The doctor found his "level of function and quality of life has markedly diminished in relation to the motor vehicle crash."[36] The evaluation noted mild right lower extremity weakness with motor perceptual, communication, and cognitive impairments, which are anticipated to be permanent.[37] As a result of cognitive and functional impairments, the evaluating doctor believes Denard will require ongoing multidisciplinary care and is not expected to attain gainful employment in the competitive job market.[38]

A doctor examining Denard on behalf of the respondent found Denard has "significant weaknesses" with regard to executive functioning, "remarkable deficits" with regard to organization, "significant difficulties with fine motor skills," as well as visual-spatial deficits.[39] With regard to Denard's abilities and future needs, the doctor found Denard is unlikely to attain a standard high school diploma and notes he will likely require some level of assistance and supervision with major life and financial decisions.[40] However, he is "unlikely to require a personal care attendant as he will be able to care for his personal needs."[41] This doctor also believes Denard will be able to perform labor-oriented work.[42]

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[34] Special Master Hearing at 16:32-16:58; *see* Kornberg, M.D., Paul B, Rehabilitation & Electrodiagnostics: Comprehensive Medical Evaluation–Denard Maybin, 2-3 (Nov. 22, 2017).
[35] Kornberg at 6; *see* Special Master Hearing at 2:19:00-2:20:45.
[36] Kornberg at 12.
[37] *Id*. at 12.
[38] *Id*. at 12; *see also* Shahnasarian, Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[39] Kelderman, M.D., Jill (The Center for Pediatric Neuropsychology), Compulsory Medical Evaluation for Denard Maybin, Jr., 9 (Aug. 22, 2018).
[40] *Id*. at 10.
[41] *Id*. at 10. This is notable as the life care plan and costs of future life care needs includes the cost of a live-in personal care attend with a present value cost of $4,195,226; as well as an item listed as "additional cost for live-in care," which has a present value of $208,692. Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Maybin, Jr., Denard vs. Florida Highway Patrol, Table 2 (Oct. 31, 2018).
[42] Kelderman at 10.

In 2018, a doctor provided a vocational rehabilitation evaluation for Denard as requested by the claimants.[43] The doctor's findings included academic and medical difficulties since the accident, and multifaceted neuropsychological difficulties. These difficulties include reasoning ability, memory, processing speed, motor skills, emotional disturbance, and anxiety among other findings.[44] The doctor concluded Denard is not likely to be capable of attaining competitive employment.[45]

The same doctor, in coordination with others, evaluated Denard's needs and developed a life care plan.[46] An economist used underlying reports from doctors evaluating the claimant to estimate economic losses and the cost of future care needs, which are identified later in this report.

Caretaking
Ms. Jones is the primary caretaker for Logan, Lanard, and Denard and takes them to all of their appointments. She testified she takes them to speech, physical, and occupational therapy appointments two days a week (2-3 hours each of those days). In addition, she takes them to appointments with specialists and their primary care physician. Ms. Jones works as a substitute teacher 1-3 days a week (depending upon appointments), which allows her to have a schedule flexible enough to get her children to their doctors and therapists. She would like to work fulltime using her bachelor's in criminal justice and seek a master's and a law degree.[47]

Estimated Economic Losses
Claimants submitted economic loss analyses[48] with regard to the children based upon medical assessments and expected needs and limitations.

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[43] Shahnasarian, Ph.D., Michael, Vocational Rehabilitation Evaluation for Denard Maybin, 33 (June 22, 2018).
[44] *Id*.
[45] *Id*.
[46] Shahnasarian, Ph.D., Michael, Life Care Plan Prepared for Denard Maybin (July 5, 2018).
[47] Special Master Hearing at 3:15:09-3:18:10. Ms. Jones testified about her worries for her children as well as her desire to make sure they are healthy and prepare them as much as possible to live without her. *Id*. at 3:31:30-3:32:00 and 3:38:50-3:39:00.
[48] *See* Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Mr. Lanard Maybin 2nd Revised Report (Nov. 7, 2019); Raffa, Frederick (Raffa Consulting Economists, Inc.), Economic Loss Analysis in the Matter of Grant, Logan vs. Florida Highway Patrol Report (Nov. 2, 2018); Raffa, Economic Loss Analysis Re: Denard.

The estimated economic losses with regard to future earning capacities in different scenarios were as follows:

Earning Capacity: Assuming Pre-Incident Employment with No Further Degree Beyond High School	
	Present Value
Logan	$1,543,014
Lanard	$1,690,822
Denard	$1,592,738

Earning Capacity: Assuming Pre-Incident Employment and Additional Schooling	
	Present Value
Logan (with a bachelor's degree)	$2,810,754
Lanard (with technical school training)	$1,834,473
Denard (with a bachelor's degree)	$2,906,356

The estimated cost of future life care needs for each child is as follows:

Cost of Future Life Care Needs	
	Present Value
Logan[49]	$6,702,555 or $6,738,094
Lanard[50]	$2,126,572
Denard[51]	$5,818,550

In summary, the estimated economic loss and cost of future care at present value[52] for each child is as follows:

- Logan $8,245,569–$9,548,848
- Lanard $3,817,394–$3,961,045
- Denard[53] $7,411,288–$8,724,906

[49] Two options were listed for Logan's Life Care Plan depending upon what is used to assist him with ambulating (Option I: Walkaide and Options 2: Bioness L300).
[50] The values for Lanard include adjusting for the correction to the life care plan evaluation (indicating the need for a live-in attendant after the age of 21 is yet to be determined by professionals).
[51] If the medical opinion of the respondent's evaluating doctor is applied (that Denard will not require live-in care), the values for Denard's future life care needs would likely be reduced by the values listed for a live-in care attendant ($4,195,226) and "additional cost for live-in care" ($208,692). If he no longer required housekeeping, that would further reduce his future life care needs by $70,761. *See* Raffa Economic Loss Analysis Re: Denard at Table 2.
[52] Raffa Economic Loss Analysis Re: Logan at Tables 3A and 3B; Raffa 2nd Revised Economic Loss Analysis Re: Lanard at Tables 3A and 3B; and Raffa Economic Loss Analysis Re: Denard at Tables 3A and 3B.
[53] *See supra* n. 48.

Combined, the estimated economic loss ranges for all three children is $19,474,251–$22,234,799.[54]

Trooper Raul Umana

During a deposition related to this matter, Trooper Umana stated he was going to pull into the median and wait until it was safe to turn around; however, he admitted he approached too quickly. He said his "lack of experience there really kicked in."[55] He said "there was too close of [a] range for me to get across and turn around."[56] Trooper Umana agreed it was part of his training to turn around in the safest area.[57] Although he did not know the speed at which he entered the median, his opinion was it "was too fast."[58]

The FHP report indicates Trooper Umana received a traffic citation for careless driving pursuant to section 316.1935, of the Florida Statutes,[59] which he states he paid.[60] He did not receive any discipline from FHP.[61]

Other Vehicles Involved in Incident

In addition to Trooper Umana's and Ms. Jones's vehicles, there were two other vehicles involved in this incident. There was a vehicle directly behind Ms. Jones's vehicle involved, as well as a tractor-trailer truck.

The Vehicle Behind Ms. Jones's Vehicle

The vehicle behind Ms. Jones, according to the FHP report, was following too closely behind her.[62] Although this vehicle did not come into contact with Ms. Jones's vehicle, the insurer of this vehicle opted to provide $20,000 in a settlement agreement.

The Tractor-Trailer Truck

Two possible issues arose with regard to the tractor-trailer truck. The first potential issue was with regard to speed. Although the tractor-trailer truck did not have a recording of

[54] Although respondent's doctor does not believe Denard will require live-in care after the age of 21, these amounts include such live-in care.
[55] Trooper Raul Umana, Deposition, 22 lines 19–12 (July 17, 2017).
[56] *Id*. at 22 line 25–23 line 5.
[57] *Id*. at 26 lines 1–4.
[58] *Id*. at 32 lines 6–11.
[59] FHP Report at 59.
[60] Trooper Raul Umana, Deposition, 53 lines 17–20.
[61] *Id*. at 53 line 14–54 line 10 (July 17, 2017).
[62] FHP Report at 26.

data like Ms. Jones's Altima had, a responding trooper originally noted the driver of the tractor-trailer truck was following too closely because the driver had stated he did not have time to react after vehicles in front of him were involved in the initial crash.[63] The significant damage to the back of Ms. Jones's vehicle, which crushed the back seat where her children were located, was from impact of the tractor-trailer truck. The second potential issue was with regard to the driver's time on duty and whether he exceeded the limit regarding driving hours.[64] Evidence was not submitted to confirm whether the driver of the tractor-trailer truck had been following too closely or driving for too many hours at the time of the crash.

Litigation History and Settlement

Two cases were filed by Ms. Jones in Orange County seeking relief as a result of this incident. One case was filed by Ms. Jones on behalf of her three children[65]; and the other was filed regarding Ms. Jones's personal injury claims.[66] Prior to trial, the parties arrived at a mediated settlement agreement[67] and both cases were subsequently closed.

Settlement

Counsel for claimants believed the potential jury verdict value of this matter would be $40-50 million.[68] The mediated settlement agreement notes claimants and respondent (FHP) acknowledged "a jury could reasonably award damages to the minor Plaintiffs in the amount of [$18 million]."[69] Counsel for the claimants stated the settlement amount was less than the amount claimants believe is the full value because of issues relating to speed and whether the use of seatbelts would have been of concern for a jury. Counsel noted there was no information suggesting Ms. Jones could have avoided the incident, but conceded the issue of the seatbelts could have affected a jury's verdict.[70]

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[63] Sworn Audio Statement, Trooper Shawn Crocker, 13:30-13:59 (June 9, 2014).
[64] Special Master Hearing at 1:06:20-1:07:06.
[65] Jones on behalf of Grant, et al. v. Fla Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.).
[66] Jones v. Fla. Highway Patrol, Case No. 2018-CA-004258-O (Fla. 9th Circ. Ct.).
[67] Special Master Hearing at 16:59-17:25.
[68] *Id*. at 20:22-20:37.
[69] Mediation Settlement Agreement, Jones on behalf of Grant, et al. v. Fla. Highway Patrol, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.), 2 (Nov. 30, 2018); Special Master Hearing at 4:02:30-4:03:56.
[70] Special Master hearing at 21:00-21:54.

The respondent did not admit liability or responsibility for the incident but did reach a mediated settlement agreement of $18,000,000.[71] 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.[72]

Funds Received by Claimants

Pursuant to settlement agreements, claimants have received funds from FHP, the insurer of the tractor-trailer truck, and the insurer of the Mercedes.

Respondent's Payment Pursuant to the Statutory Cap

The claimants received the remaining amount ($285,000)[73] of the respondent's statutory limit ($300,000 per incident) from the Division of Risk Management and seek the remaining balance of the settlement ($17,715,000) through this claim bill. From payment of the limit, claimants' net proceeds were $142,999.14, and the following disbursements were made[74]:

- Christeia Jones $49,999.14
- Logan Grant Special Needs Trust (SNT) $25,000.00
- Denard Maybin, Jr. SNT $25,000.00
- Lanard Maybin SNT $50,000.00

Settlement Funds from other Insurance Policies

In addition to the respondent's payment, the children received funds from settlements with insurers of two other vehicles involved in the accident.[75]

Each of the children recovered funds from the tractor-trailer truck's insurance company, and Ms. Jones recovered a portion of each of those amounts, as well. The total recovery from the tractor-trailer truck's insurance company was $965,984.33. After payment of attorney fees and costs and liens, the distributions were as follows:

- Christeia Jones $15,000
- Logan Grant SNT $185,031.80

[71] Order on Petition for Approval of Personal Injury Settlement of Minors Logan Grant, Denard Maybin, Jr., and Lanard Maybin, Case No. 2017-CA-000732-O (Fla. 9th Circ. Ct.) (June 24, 2019).
[72] Mediation Settlement Agreement at 2.
[73] The first $15,000 of respondent's limit went to the driver of the tractor-trailer truck. Correspondence from Kenneth McKenna, Attorney for Claimants (Nov. 12, 2019).
[74] Closing Statement, Recovery from FHP (June 27, 2018); *see* Affidavit of Attorney for Claimants Attorney (Oct. 16, 2019).
[75] Affidavit of Attorney for Claimants at 2.

(from total recovery of $482,992.17)
- Denard Maybin, Jr. SNT $154,191.15
(from total recovery of $386,393.73)
- Lanard Maybin SNT $41,535.42
(from total recovery of $96,598.43)

Claimants recovered $20,000 from an insurer of the Mercedes traveling behind Ms. Jones that was involved in the incident. From this settlement, proceeds to claimants totaled $5,644.22, which was distributed as follows:
- Logan Grant SNT $1,881.41
- Denard Maybin, Jr. SNT $1,881.41
- Lanard Maybin SNT $1,881.40

Balance of Each Child's Special Needs Trust
As of fall 2019, the balance of each child's special needs trust is as follows[76]:
- Logan Grant SNT $205,368.83
- Denard Maybin, Jr. SNT $170,415.51
- Lanard Maybin SNT $80,817.50

Liens
Florida Medicaid had asserted liens on each claimant though HMS/Conduent, which have been paid in full.[77]

WellCare has asserted a lien of $49,767.42 regarding Logan Grant; $22,869.40 on Denard Maybin, Jr.; and $8,485.71 on Lanard Maybin.[78] Counsel for claimants indicated funds are being held in trust for payment of these liens; however, there is disagreement with regard to how much is to be paid.[79]

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all

[76] Information is as of September 12, 2019 for all accounts.
[77] First Updated Affidavit of Attorney for Claimants, 2 (Nov. 12, 2019).
[78] Affidavit of Attorney for Claimants at 3. Special Master Hearing at 2:50:30-2:54:30.
[79] First Updated Affidavit of Attorney for Claimants, 3 (Nov. 12, 2019).

claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

In this matter, the claimants allege negligence on behalf of Trooper Umana. The State is liable for a negligent act committed by an employee acting within the scope of employment. Trooper Umana was operating his patrol vehicle while on duty and was within the scope of his employment with Florida Highway Patrol (a division of the Department of Highway Safety and Motor Vehicles). Therefore, his employer, ultimately the State, is liable for negligent acts committed by him pursuant to the statutory sovereign immunity waiver.

Negligence

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.[80]

Duty

Statute and case law describe the duty of care placed upon motorists. Florida's statute regarding careless driving provides:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.[81]

Case law provides motorists have a duty to use reasonable care to avoid accidents and injury to themselves and others.[82] The driver of an automobile, a "dangerous instrumentality," is responsible for maintaining control of the vehicle, commensurate with the setting, and being "prepared to meet

[80] Williams v. Davis, 974 So.2d 1052, at 1056–1057 (Fla. 2007).
[81] Section 316.1925(1), Fla. Stat.
[82] Nelson v. Ziegler, 89 So.2d 780, 783 (Fla. 1956).

the exigencies of an emergency within reason and consistent with reasonable care and caution."[83]

Breach
The undersigned finds Trooper Umana breached the duties described above when he approached the median too quickly, as he admitted himself, and attempted to turn around in the center median.

Causation
Trooper Umana's breach of duty in approaching the median too quickly caused him to hit the guardrail and travel into oncoming traffic where he made impact with other vehicles, including the Jones's Altima. The collision with Trooper Umana's vehicle pushed the Jones's vehicle into the path of the tractor-trailer truck traveling in the middle lane. Impact with the tractor-trailer truck caused significant damage to the back of the vehicle and injured the children in the backseat.

Case law provides, when injury results "directly and in ordinary natural sequence from a negligent act without the intervention of any independent efficient cause," where the sequence "should be regarded as a probable, not a mere possible, result of the negligent act, [the injured person] is entitled to recover damages as compensation."[84] The undersigned finds it probable, not merely possible, the Jones's vehicle would be hit by another vehicle after being hit by Trooper Umana's vehicle on a three-lane highway. The damages sustained by the Joneses are the natural result of the sequence of events set in motion by Trooper Umana.

Damages
As a result of the collision, doctors indicated all three children suffered traumatic brain injuries as well as the medical injuries previously described in this report. The total amount of damages provided by claimant's economic analyst is $19,474,251–$22,234,799.

As noted previously, the doctor examining the children for the respondent does not believe Denard will require live-in assistance. If Denard does not require live-in care after the age of 21, the economic loss for him may be significantly

[83] Nelson, 89 So.2d at 783.
[84] Loftin et al. v. McCrainie, 47 So.2d 298, 301 (Fla. 1950).

reduced. However, claimants' experts provide Denard will need such care and have calculated live-in care into the economic loss analysis. Given the claimants' submissions from various experts collaborating to create the life care plan, the undersigned finds the preponderance of evidence demonstrates Denard's estimated future need of live-in care should remain in the calculation.

Respondent and claimants agreed a jury could have awarded $18,000,000 to the children and settled for that amount–which is less than the calculations provided by the economic analyses.

Comparative Negligence

Comparative negligence "involves the apportionment of the loss among those whose fault contributed to the occurrence" and a claimant cannot recover damages for the percentage of fault for which she is liable. [85]

Ms. Jones

In this matter, Ms. Jones was exceeding the speed limit by traveling at 88 miles per hour on a highway with a 70 mile per hour speed limit; and two of the children were unbuckled when emergency responders found them.

With regard to Ms. Jones's speed, claimants' counsel did not provide argument of negligence on behalf of Ms. Jones for which damages apportioned to the respondent should be reduced, and respondent remained silent pursuant to the settlement agreement. The data recorder clearly provides evidence Ms. Jones had breached her duty to drive the speed limit. However, information was not provided demonstrating her speed specifically contributed to the causation of the damages suffered.

With regard to seatbelts, "a claim that a plaintiff failed to wear a seat belt and that such failure was a contributing cause of plaintiff's damages should be raised as an affirmative defense of comparative negligence."[86] Testimony and information (provided by Ms. Jones and her grandmother) was consistent that Ms. Jones had buckled her three children, as well as herself, before she started

[85] Hoffman v. Jones, 280 So.2d 431, 436 (Fla. 1973).
[86] Ridely v. Safety Kleen Corp., 693 So.2d 934, 935 (Fla. 1996).

driving. Ms. Jones also indicated she did not have knowledge of the children unbuckling themselves; however, Lenard and Denard were both found unbuckled by first responders. Regardless of how the children were unbuckled, a comparative negligence defense would also require demonstration that the breach of a duty contributed to the damages sustained. Here, counsel for claimants argued if Lenard and Denard were unbuckled–it may have saved their lives.

Given the information she had buckled the children before driving; did not have knowledge of the children unbuckling themselves if or when they did; the argument they would have sustained greater injuries if they remained restrained to the back seat which had extensive crush damage (thereby more than likely not contributing to damages); and no argument from respondent with regard to a comparative negligence defense–no contributory[87] negligence has been demonstrated.

Driver of the Tractor-Trailer Truck
Similarly, although counsel for claimants mentioned there may have been issues explored with regard to the driver of the tractor-trailer truck (potentially exceeding hours he was allowed to work and a trooper noting the driver may have been speeding) there was no demonstration of the elements required to find comparative negligence on behalf of the tractor-trailer truck driver. The only information provided regarding hours of driving was in the FHP report, which indicated five violations in eight days but stated "these violations alone are not likely to cause a fatigue factor."[88] General information regarding speed of the truck indicates the driver recalled traveling at 65 miles per hour at the time of the incident and that the truck was traveling between 60 and 80 miles per hour 69% of the time.

Ms. Jones's vehicle sustained the most significant damage from impact with the tractor-trailer truck. If more information were available regarding potential comparative negligence on behalf of the truck driver, it is possible the respondent's responsibility for damages would be reduced; however,

[87] *See* Section 768.81(2), Fla. Stat., describing contributory fault and its effect as "fault chargeable to the claimant [which] diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."
[88] FHP Report at 15.

further information to find comparative negligence on behalf of the tractor-trailer truck driver was not presented by claimants and the respondent remained silent but acknowledged such issues of comparative negligence had been explored.

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Counsel for the claimants indicated attorney fees will be 20 percent, and lobbying fees will amount to 5 percent, of the total funds awarded through the claim bill.[89]

RECOMMENDATIONS:

Recommended Amendment(s)
Although the settlement agreement resolved Christeia Jones claims, as well as claims on behalf of her three boys, Ms. Jones is not seeking relief in an individual capacity through this claim bill.[90]

Therefore, the undersigned recommends removing references in the bill identifying Ms. Jones as a claimant, or providing relief to her; or, replacing such portions with clarifying language providing the funds to the special needs trusts of Logan Grant, Denard Maybin, Jr., and Lanard Maybin, which are handled by Ms. Ashley Gonnelli of Guardian Trust Foundation, Inc.[91]

Recommendation on the Merits
The undersigned did not have the benefit of hearing argument from both parties due to the settlement agreement requiring the respondent to remain silent on the claim bill and not support or oppose the bill.[92] Therefore, the above facts, conclusions of law, and recommendations are the result of argument and information provided by counsel for the claimants.

Based upon the information provided before, during, and after the special master hearing, the undersigned finds claimants have demonstrated negligence on behalf of the

[89] Affidavit of Attorney for Claimants at 2 (noting outstanding costs of $15,603.17 with regard to representation of the claimants).
[90] Affidavit of Attorney for Claimants, 1 (Oct. 16, 2019).
[91] E-mail Correspondence from Mr. Daniel Smith, Attorney for Claimants (Jan. 16, 2020).
[92] Special Master Hearing at 22:13-22:18.

respondent and the amount sought is reasonable when compared to analyses provided by claimants' economist.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

437360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 145 - 151

and insert:

Section 2. The sum of $7.5 million is appropriated from the General Revenue Fund to the Department of Highway Safety and Motor Vehicles for the relief of Christeia Jones as compensation for injuries and damages sustained by her and her minor sons, Logan Grant, Denard Maybin, Jr., and Lanard Maybin.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Christeia Jones in the sum of $7.5

437360

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

And the title is amended as follows:

Delete lines 131 - 139

and insert:

$18 million, and both parties agreed to a settlement in the amount of $7.5 million, and

WHEREAS, the settlement agreement requires the Division of Risk Management of the Department of Financial Services to pay $285,000 to Ms. Jones pursuant to the statutory limits of liability in s. 768.28, Florida Statutes, and

WHEREAS, Ms. Jones seeks satisfaction of the remaining balance of the settlement agreement, which is $7.5 million, NOW, THEREFORE,

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

October 13, 2021

The Honorable Chair Danny Burgess
308 Senate Office Building
400 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Burgess,

I would like to request that SB 80 Relief of Christeia Jones be heard in the next Judiciary Committee meeting.

Christeia Jones and her three children were in an automobile accident caused by a FHP officer causing serious injuries to her children and herself.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

cc: Tom Cibula, Staff Director

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

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

9 11/24/2020	SEN 80
Meeting Date	Bill Number or Topic
JUDICIARY	
Committee	Amendment Barcode (if applicable)

Name Kenneth McKenna Phone 407 244 3000

Address 719 Vassar St Email KMCKENNA@DWKLAW.com
Street

Orlando. FL 32804
City State Zip

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Attorney for Clnts

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 1796
INTRODUCER:	Judiciary Committee; Senator Gruters and others
SUBJECT:	Dissolution of Marriage
DATE:	January 26, 2022 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1796 amends laws related to alimony and bifurcation of a dissolution of marriage cases. Changes to alimony law applicable to any final judgment entered on or after July 1, 2022 include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- Rehabilitative alimony is limited to 5 years.
- Durational alimony:
  - May not be awarded for a marriage of less than 3 years, is limited to 50 percent of the term of the marriage if the marriage was between 3 and 10 years, 60 percent if between 10 and 20 years, or 75 percent if the marriage lasted more than 20 years. These time limits are extended if the obligee is disabled or is a full time caretaker of a totally disabled child of both spouses, but only so long as the obligee qualifies.
  - May not exceed the lesser of the obligee's reasonable need or 35 percent of the difference between the parties' net incomes.
- The bill creates a presumption that both parties will have a lower standard of living after dissolution of the marriage.
- No alimony may be awarded to a party whose net income exceeds the net income of the other party.
- A court may not require an obligor to purchase life insurance to secure the award of alimony.
- The concept of a supportive relationship is expanded to allow consideration of a supportive relationship when first setting alimony in the dissolution of marriage case. The criteria

defining a supportive relationship at the time of dissolution is the same as for a later modification.

Current law on the effect of retirement on alimony is common law. The bill codifies standards and procedures related to retirement of a party to a dissolution of marriage case:

- A proposed obligor who is retired at the time of the dissolution of marriage may not be required to pay any form of alimony unless:
  - The exceptions to retirement exist (see below); and
  - The party seeking alimony does not qualify for any Social Security benefits.
- If the obligor seeks to retire in the future (final judgment after July 1, 2022), the obligor must give one years' prior notice of the planned retirement. The retirement will be effective and durational alimony will end when the obligor reaches the earlier of the Social Security full retirement age or when persons of his or her profession typically retire, unless the obligee timely objects by showing any of the following:
  - The exceptions to retirement exist (see below);
  - If applicable, the obligor has not proven that he or she has reached the age when persons of his or her profession typically retire; or
  - The obligor continues to work beyond the planned retirement and earns active income of more than 50 percent of the past 3-year average.
- If the obligor seeks to retire in the future (modification of a final judgment entered prior to July 1, 2022), the obligor must give one years' prior notice of the planned retirement. The retirement will be effective and the alimony will phase out (25 percent a year) starting when the obligor reaches the earlier of age 65 or when persons of his or her profession typically retire, unless the obligee timely objects by showing any of the following:
  - The exceptions to retirement exist (see below); or
  - The obligor continues to work beyond the planned retirement and earns active income of more than 50 percent of the past 3-year average.
- Alternatively, there will be no phase out and alimony may be modified or terminated based on a reasonable retirement.
- The exceptions to retirement that allow a court to extend alimony, in part or in whole, beyond the obligor's retirement are:
  - The party seeking alimony is full-time caregiver to a disabled common child;
  - The party seeking alimony would have an income of less than 130 percent of the federal poverty level; or
  - The marital settlement agreement, if one was entered into, prohibits the modification.

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 two years from the date the respondent received the summons, effective for petitions filed on or after July 1, 2022.

The bill is effective July 1, 2022, and applies to cases pending on the effective date except as noted.

II. Present Situation:

Dissolution of marriage may involve many different but related matters. The matters related to dissolution addressed by this bill are alimony and bifurcation.

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.

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

[1] Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).
[2] Section 61.08(2), F.S.
[3] Section 61.08(2)(a)-(j), F.S.

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 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]

The length of the marriage does not include time spent cohabitating prior to marriage.[12]

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[4] IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019,* (updated March 24, 2021), *available at* https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019 (last viewed Jan. 24, 2022).
[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.
[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.; *Rabadan v. Rabadan*, 322 So. 3d 660 (Fla. 4th DCA 2021).
[11] Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.
[12] *Taylor v. Davis*, 324 So. 3d 570 (Fla. 1st DCA 2021) (couple cohabitated for 24 years prior to 3 year marriage, court denied an award of permanent alimony because it was a short-term marriage).

Florida law recognizes four forms of alimony: bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[13]

Bridge-the-gap alimony:[14]
- 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:[15]
- 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.

Durational alimony:[16]
- 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:[17]
- 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.

[13] Section 61.08(1), F.S.
[14] Section 61.08(5), F.S.
[15] Section 61.08(6), F.S.
[16] Section 61.08(7), F.S.
[17] Section 61.08(8), F.S.

- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances, including retirement of the obligor or upon the existence of a supportive relationship benefiting the obligee.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Modification or Termination of Alimony - In General

Where allowed, either party may seek modification (up to termination) of an alimony award on the grounds of a substantial change in circumstances.[18] 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.[19]

The mere existence of a substantial change in circumstances does not automatically lead to a modification or termination of alimony, it merely opens up the question of the appropriate amount of alimony based on the new situation and on the normal equitable factors, namely need and ability to pay. The court may modify support retroactively to the date of the filing of the motion.[20] Where the parties to a dissolution of marriage settled the case and have designated alimony as non-modifiable in the marital settlement agreement, the court may not thereafter modify the alimony.[21]

Modification Based on a Supportive Relationship

To avoid termination of an alimony award because of remarriage, it was once common for an obligee former spouse to simply "live with" someone else in a committed but non-marital arrangement. 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 (up to termination) 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.[22]

[18] Section 61.14(1)(a), F.S.
[19] *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016); *Tanner v. Tanner*, 2021 WL 4877772 (Fla. 2nd DCA 2021).
[20] Section 61.14(1)(a), F.S.
[21] *Dills v. Perez*, 2021 WL 5140865 (Fla. 5th DCA 2021)("parties to a marital dissolution are free to enter into contractual agreements that include provisions no court of law could impose.").
[22] Section 61.14(b), F.S.

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[23]

Modification Based on Retirement

Retirement of a party in a pending dissolution of marriage case falls within the "need and ability to pay" framework. Voluntary retirement may qualify as a substantial change in circumstances which warrants a modification or termination of an existing alimony award. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action.

Retirement, whether related to an initial award of alimony or as a substantial change in circumstances for modification, is not addressed in statute. In deciding whether to modify or terminate alimony based on retirement of the obligor, the courts look to whether the retirement is reasonable. 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.[24]

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 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

[23] Section 61.14(1)(b)1., F.S.
[24] *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

> 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.[25]

The Florida Supreme Court has established 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.[26]

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.[27] 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.[28]

Presumptions that 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.[29]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[30] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced 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.[31]

Social Security Retirement Age

The original Social Security Act of 1935 set the age for receiving full retirement benefits at 65.[32] Citing improvements in the health of older people and increases in average life expectancy as primary reasons for increasing the normal retirement age, Congress has increased the age for full

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[25] *Claughton v. Claughton*, 393 So. 2d 1061, 1062 (Fla. 1980).
[26] Fla. R. Jud. Admin. 2.250(a)(1)(C).
[27] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[28] Section 90.302, F.S.
[29] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[30] Section 90.304, F.S.
[31] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).
[32] U.S. Social Security Administration, *Social Security Fact Sheet: Increase in Retirement Age*, https://www.ssa.gov/pressoffice/IncRetAge.html (last viewed Jan. 24, 2022).

retirement. On the effective date of this bill, the full retirement age for Social Security purposes will be 66 years and 4 months of age. It will increase gradually in the future until it reaches 67 years of age on January 1, 2027.[33]

The minimum age for claiming Social Security retirement benefits is 62. Benefits are reduced when a person elects to take early benefits.[34] The act increasing the age for full benefits did not change the minimum age for claiming benefits.

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill eliminates permanent alimony as a form of alimony that a court may award.[35] 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 repeals current law that allows a court to consider the adultery of either spouse when determining the amount, if any, of alimony to award.

The bill requires the court to make specific written findings of the need for alimony. 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.
- 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 underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

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[33] U.S. Social Security Administration, *Retirement Benefits*, https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed Jan. 24, 2022).
[34] *Id*.
[35] Permanent alimony could effectively still be created by the parties if they agree in their marital settlement agreement to durational alimony that is non-modifiable and extends for enough years that it extends beyond their lifetimes.

The bill changes the length of time married as a classification of a marriages being either short-term, moderate-term, or long-term. A short-term marriage is changed to 0-10 years, a moderate-term marriage is changed to 10-20 years, and a long-term marriage is changed to 20 or more years duration. The bill also repeals references to these three terms of marriage; thus, the changes in length of marriages has no effect.

The bill limits the length of an alimony award:

- Bridge-the-gap alimony is not changed by the bill, and remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 5 years or upon early completion of the rehabilitation plan.
- No durational alimony may be awarded if the marriage lasted fewer than 3 years.[36] Durational alimony may end upon retirement of the obligor (see discussion below). With two exceptions, durational alimony of a marriage of over 3 years is limited in duration to:
  - 50 percent of the length of the marriage if the length of the marriage was between 3 and 10 years.
  - 60 percent of the length of the marriage if the length of the marriage was between 10 and 20 years.
  - 75 percent of the length of the marriage if the length of the marriage was over 20 years.
- The two exceptions regarding the maximum length of durational alimony, which thereby allow durational alimony to extend beyond the maximum length above, but only apply so long as there is a need for the special exception. They are:
  - Where the party seeking alimony is permanently mentally and physically disabled; or
  - Where the party seeking alimony is the full-time caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.

The bill also changes durational alimony to:

- Limit the amount of durational alimony to the lesser of the obligee's reasonable need or no more than 35 percent of the difference between the parties' net incomes.
- Add that proof of a supportive relationship between the obligee and another person, at any time starting 180 days prior to the filing of the action for dissolution, may be considered by the court. The factors that a court must consider in finding whether a supportive relationship exists are the same factors used in current law applicable to a modification based on a supportive relationship.
- Repeal the requirement to show "exceptional circumstances" in order to modify the length of the alimony.
- Codify standards for retirement by an obligor (see retirement discussion below).

The term "net income" is defined by the bill as gross income[37] 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.

[36] The length of the marriage is calculated as follows: the time period starts on the date of the marriage, and ends on date of the filing of the petition for dissolution of the marriage.

[37] 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.

- 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:

- 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 to that spouse, 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.
- 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.
- The bill repeals the provision providing that an award of alimony may not leave the obligor with significantly less net income than the obligee, except with exceptional circumstances. Instead, the bill provides that, notwithstanding any other statute regarding alimony, 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.

Retirement - Cases First Adjudicated After July 1, 2022

When an obligor reaches the Social Security full retirement age, or reaches the customary retirement age for his or her profession, durational alimony ends, provided that:

- Notice of retirement was personally served on the obligee, or his or her last known attorney of record, at least one year prior to the intended date of retirement.
- The obligee has not objected, or if the retirement was objected to, the court has approved the retirement.

Any of the following are grounds for objection to retirement:

- That the obligee's income after the modification or termination would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.
- That the retirement is a violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement.
- That the obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.
- That the obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

If the obligor continues to work beyond the noticed retirement date and earns active gross income of more than 50 percent of the 3 year average preretirement active gross income, the

court must extend durational alimony to the end of its previously-ordered termination or the point at which the obligor reduces his or her active gross income to less than 50 percent.

The term "active gross income" generally means income from active work or self-employment and excludes investment and other passive income. Specifically, the bill defines "active gross income" as:

> Salary, wages, bonuses, commissions, allowances, overtime, tips, and other similar payments and business income from self-employment, partnership, close corporations, independent contracts, and other similar sources. For purposes of this definition, "business income" means gross receipts minus ordinary and necessary expenses required to produce income and requires that such business income be derived in a way that meets any of the material participation tests outlined in the Internal Revenue Service's Publication 925 (2020), Passive Activity and At-Risk Rules.

If a spouse has reached the Social Security full retirement age at the time of the final adjudication of the petition for dissolution of marriage, that spouse may not be ordered to pay any form of alimony to the other spouse unless the other spouse has not yet reached the minimum age to receive any Social Security retirement benefits, and one of these apply:

- The other spouse would, based on the outcome of the dissolution, have income less than 130 percent of the federal poverty guidelines for a one-person household;[38]
- The party seeking alimony is the full-time caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or
- The party is permanently and mentally or physically disabled and as a result thereof is unable to provide for his or her own support, whether partially or fully.

Retirement - Modification of an Existing Award of Alimony

Within the 12 months prior to a planned retirement, an obligor may file a notice of retirement and intent to terminate alimony. A copy must be personally served on the obligee or his or her attorney. The obligee has 20 days from service to object to the retirement. Any of the following are grounds for objection:

- That the obligee's income after the modification or termination would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.
- That the modification or termination is a violation of the terms of a marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification or termination of alimony specified in the agreement.
- That the obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties.

[38] The 2022 HHS Poverty Guideline for a one-person household is $13,590. https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines. 130% of that figure is $17,667. The guidelines are adjusted annually.

- That the obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

If any of these conditions exist, the court must make written findings and must consider the following factors when deciding whether to reduce the length or amount of alimony:

- The duration of the marriage.
- The financial resources of the obligee, comparing them to those distributed at divorce and in light of how the obligee has managed those assets.
- The obligee's current assets and available sources of income, including retirement accounts not subject to a tax penalty for early withdrawal.[39]
- The effort and sacrifices of time and leisure that would be necessary for the obligor to continue to provide such alimony.
- Consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.
- The obligor's age and health.
- The terms of a marital settlement, if any, that govern modification of alimony.

Unless the obligee objects and the court rules in favor of the obligee:

- Durational alimony is decreased by 25 percent starting on the later of one year after the notice of intent to retire was filed or the date that the obligor reaches 65 years of age.
- Durational alimony is decreased an additional 25 percent (of the initial amount) each year thereafter until termination after 4 years.
- However, if the obligor continues to work beyond the Social Security full retirement age, and in so working earns more than 50 percent of the 3-year average preretirement active gross income, the court may extend the length of alimony until the obligor reduces his or her active gross income below the 50 percent threshold.

Alternatively, an obligor may seek court permission to retire earlier than age 65 and terminate alimony if that is reasonable for his or her profession or line of work. An obligor who is past the Social Security full retirement age may also petition the court for a reasonable retirement. The petition may be filed up to 12 months before the anticipated retirement. If the court finds the retirement to be reasonable, the court must allow the retirement and thereby terminate alimony, unless it finds and puts in writing cause not to allow the retirement. In determining whether the retirement is reasonable, the court must consider these factors:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work and the typical retirement age for that profession or line of work.
- The impact that a termination or reduction of alimony would have on the obligee, considering assets of the obligee, income generated by such assets, retirement assets from which the obligee can access income without incurring early withdrawal penalties, and the obligee's role in the depletion or conservation of any assets.

[39] "Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called "early" or "premature" distributions. Individuals must pay an additional 10% early withdrawal tax unless an exception applies." https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions (last viewed Jan. 24, 2022). The IRS recognizes 18 exceptions to the early withdrawal tax.

The bill provides that new receipt of any Social Security, disability, or retirement payments by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill further provides that agreements on alimony payments, whether voluntary or pursuant to a court order, which allow for modification or termination of alimony are considered agreements that are expressly modifiable or eligible for termination once the specified condition is met.

Modification or 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. If the court finds that a supportive relationship existed, the court may order equitable reimbursement of past alimony that was paid.

The bill provides that, upon proof that a supportive relationship, the obligee has the burden of proof to show that alimony should not be reduced or terminated. Thus, the bill effectively creates a presumption that alimony should be reduced or terminated if the obligee is involved in a supportive relationship.

The bill requires that a court make written findings regarding each of the factors regarding whether a supportive relationship exists.

The bill provides that supportive relationship of the obligor is not actionable. Remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony.

Bifurcation of Dissolution Case

Applicable to a petition for dissolution of marriage filed on or after July 1, 2022, the bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than two years 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.

Effective Dates

The bill takes effect July 1, 2022.

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:

Indeterminate. CS/SB 1796 may reduce litigation costs by making alimony awards more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

At lines 248-256 the bill redefines the terms in years of a short-term marriage, a moderate-term marriage, and a long-term marriage. However, the bill also repeals all reference to short-term, moderate-term and long-term in statute (see lines 288, 289, 413, 415, and 418). Because the changed terms are not used in the amended law, lines 248-256 could be removed from the bill without impacting the effect of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.08, 61.14, and 61.19.

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 January 24, 2022:
The committee substitute removes a reference to "involuntary combat-related disability benefits" as an exception to income of a party; removes the priorities of the remaining types of income; removes the ability to agree to permanent alimony; repeals current law allowing evidence of adultery; removes new limit on rehabilitative alimony of one-half of the durational alimony limit; replaces references to "medically needy" in favor of "permanently disabled"; removes statutory prohibition on court considering the income and assets of a new spouse of the obligor; changes bifurcation period from one year to two years; and makes numerous technical, grammar and style changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2022	.	
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	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (1) through (23) of section 61.046, Florida Statutes, are redesignated as subsections (2) through (24), respectively, a new subsection (1) is added to that section, and present subsection (8) of that section is amended, to read:

61.046 Definitions.—As used in this chapter, the term:

(1) "Active gross income" means salary, wages, bonuses,

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commissions, allowances, overtime, tips, and other similar payments and business income from self-employment, partnership, close corporations, independent contracts, and other similar sources. For purposes of this definition, "business income" means gross receipts minus ordinary and necessary expenses required to produce income and requires that such business income be derived in a way that meets any of the material participation tests outlined in the Internal Revenue Service's Publication 925 (2020), Passive Activity and At-Risk Rules.

(9) ~~(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, trust distributions ~~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 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 support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing an order for maintenance, spousal support, temporary support, or separate

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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(2).

(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. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony


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is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) ~~The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.~~ In all dissolution actions, the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3)~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the ~~either~~ party seeking alimony or maintenance has an actual need for it ~~alimony or maintenance~~ and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony or maintenance has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(9) ~~(5)-(8)~~, the court must ~~shall~~ consider all relevant 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 their standard of living during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.


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(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, 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


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policy on the obligor's life in an amount adequate to ~~or a bond, or to otherwise~~ secure such alimony award. If the obligee purchases a life insurance policy, the obligor must cooperate in the process of procuring the issuance and underwriting of the life insurance policy ~~with any other assets which may be suitable for that purpose~~.

(5) ~~(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 10 ~~7~~ years, a moderate-term marriage is a marriage having a duration between ~~of greater than~~ 10 ~~7~~ years and 20 ~~but less than 17~~ years, and a long-term marriage is a marriage having a duration of 20 ~~17~~ years or longer ~~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.

(6) ~~(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 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.

(7)(a) ~~(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

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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.

(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.

(8)(a) ~~(7)~~ 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 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 in accordance with s. 61.14. Durational alimony may not be awarded following a marriage lasting fewer than 3 years. ~~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 a ~~the~~ marriage lasting between 3 and 10 years, 60

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percent of the length of a marriage lasting between 10 and 20 years, or 75 percent of the length of a marriage lasting 20 years or longer. However, if the party seeking alimony is either permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully, or is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, the court may extend durational alimony beyond the thresholds established in this subsection based on the duration of the marriage until the death of the child or until the court determines that there is no longer a need for durational alimony. 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. 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.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.

(c) In determining the length of an award of durational alimony, the court shall reduce the length of an award of durational alimony for the length of time during which obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed

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between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written finding of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the party obliged to pay alimony reaches full retirement age as determined by the Social Security Administration or the customary retirement age for his or her profession before the end of the durational period indicated by paragraph (a), the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The payor files a notice of retirement and intent to terminate alimony with the court and personally serves the alimony recipient or his or her last known attorney of record at least 1 year before the date that the obligor’s retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the


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findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication 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)1. As a result of the dissolution of marriage, the party seeking alimony would have an income less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early


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withdrawal penalties; or

2. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(10) Notwithstanding any other 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.

(11) 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.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, 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~~

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~~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 that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the

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court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (b) of subsection (1) of section

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61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of alimony.

2. In determining the extent to which ~~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 must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following factors ~~shall elicit the nature and extent of the relationship~~

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~~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," or otherwise conducting themselves in a manner that evidences a permanent 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.

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

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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.

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.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee or his or her last known attorney of record with such notice.

(b) The obligee shall have 20 days after the date of service of the notice to request the court to enter findings that as of the date of filing of the notice:

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1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of

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marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor’s average preretirement annual active gross income for

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the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) 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 65 years of age, or if the obligor is past his or her full retirement age as determined by the 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 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 since the final judgment of dissolution of marriage, including any income generated by such assets and retirement assets from which the obligee can access income without incurring early withdrawal penalties, and the obligee's role in the depletion or conservation of any assets.

(g) Up to 12 months before the obligor's anticipated retirement under paragraph (f), 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

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the alimony award after the obligor's retirement unless the court makes written findings of fact under paragraph (f) 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) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

Section 4. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage;~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage,~~;~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2) If more than 2 years have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of

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marriage, the court shall, upon request of either party, grant a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter temporary orders necessary to protect the parties and their children, if any, which orders remain effective until all other issues are adjudicated by the court. This subsection applies to all petitions for dissolution of marriage filed on or after July 1, 2022.

Section 5. The court shall apply this act to any action pending on or after July 1, 2022.

Section 6. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; defining the term "active gross income"; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to make certain written findings in its awards of alimony; removing the court's ability to consider adultery of either spouse in determining the amount of an alimony award; 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

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insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of procuring the life insurance; modifying certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting an award of rehabilitative alimony from exceeding a specified timeframe; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain condition; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding specified timeframes; specifying what constitutes the length of a marriage for the purpose of determining durational alimony; requiring the court to reduce the length of an award of durational alimony based on certain payments made by the obligor; authorizing the court to extend durational alimony under certain circumstances; requiring the court to make certain written findings when awarding durational alimony; requiring the court to consider specified factors when determining an alimony award involving the existence of a supportive relationship between the obligee and another person; providing for the burden of proof in such determinations; providing construction; providing for the termination of a durational alimony award upon retirement of the obligor under certain circumstances; providing a formula for the calculation of durational


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alimony; providing that a party who has reached retirement age before adjudication of a petition for dissolution of marriage may not be ordered to pay alimony; providing exceptions; 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 income; providing applicability; 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; providing for the burden of proof in such determinations; revising factors the court may consider when determining whether a supportive relationship exists or existed between the obligee and another person; requiring the court to make its findings related to such factors in writing; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; authorizing an obligor to file a notice of retirement and intent to terminate alimony within a specified timeframe before such retirement; providing notice and response


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requirements; requiring the court to make written findings regarding specified factors when deciding whether to reduce the amount or duration of alimony; providing for the reduction and termination of alimony within specified timeframes under certain circumstances; authorizing the court to extend durational alimony beyond an obligor's retirement age under certain circumstances notwithstanding its other findings; 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 or is past his or her full retirement age; 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; amending s. 61.19, F.S.; requiring the court to grant, upon request of either party, a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain

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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.

By Senator Gruters

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A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; defining the term "active gross income"; 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 only if both parties enter into such agreement; 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 procuring the life insurance; modifying 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 condition; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding specified timeframes; authorizing the court to extend durational

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alimony under certain circumstances; specifying what constitutes the length of a marriage for the purpose of determining durational alimony; requiring the court to make certain written findings when awarding durational alimony; requiring the court to consider specified factors when determining an alimony award involving the existence of a supportive relationship between the obligee and another person; providing for the burden of proof in such determinations; providing construction; providing for the termination of a durational alimony award upon retirement of the obligor under certain circumstances; 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 exceptions; 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 income; requiring the court to consider any alimony payments made to the obligee when determining the amount and length of rehabilitative or durational alimony; providing applicability; 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; providing for the burden of proof in such determinations; revising factors the court may consider when determining whether a supportive relationship exists or existed between the obligee and another person; requiring the court to make its findings related to such factors in writing; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; prohibiting modifications of alimony awards based on the income of either party's subsequent spouse or person with whom he or she resides; authorizing an obligor to file a notice of retirement and intent to terminate alimony within a specified timeframe before such retirement; providing notice and response requirements; requiring the court to make written findings regarding specified factors when deciding whether to reduce the amount or duration of alimony; providing for the reduction and termination of alimony within specified timeframes under certain circumstances; authorizing the court to extend durational alimony beyond an obligor's retirement age under certain circumstances notwithstanding its other findings; 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; amending s. 61.19, F.S.; requiring the court to grant, upon request of either party, a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other 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. Present subsections (1) through (23) of section 61.046, Florida Statutes, are redesignated as subsections (2) through (24), respectively, a new subsection (1) is added to

that section, and present subsection (8) of that section is amended, to read:

61.046 Definitions.—As used in this chapter, the term:

(1) "Active gross income" means salary, wages, bonuses, commissions, allowances, overtime, tips, and other similar payments and business income from self-employment, partnership, close corporations, independent contracts, and other similar sources. For purposes of this definition, "business income" means gross receipts minus ordinary and necessary expenses required to produce income and requires that such business income be derived in a way that meets any of the material participation tests outlined in the Internal Revenue Service's Publication 925 (2020), Passive Activity and At-Risk Rules.

(9)~~(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, trust distributions ~~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, involuntary combat-related disability benefits, and combat-related special compensation disability benefits, provided the servicemember recipient has not elected to have the amount of retirement benefits to which he or she is entitled reduced by the receipt of such 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 support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing 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(2).

(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 form of alimony. The court may grant permanent alimony only if the parties enter into an agreement for permanent alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. However, the adultery of a spouse may not be the court's sole basis for denying a request for alimony or awarding alimony, unless the adultery contributed to a depletion of marital assets. In all dissolution actions, the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3) ~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the ~~either~~ party seeking alimony or maintenance has an actual need for it ~~alimony or~~

~~maintenance~~ and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony or maintenance has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(9) ~~(5)-(8)~~, the court must ~~shall~~ consider all relevant 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 their standard of living 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, 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. If the obligee purchases a life insurance policy, the obligor must cooperate in the process of procuring the issuance and underwriting of the life insurance policy ~~with any other assets which may be suitable for that purpose~~.

(5)~~(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 10 ~~7~~ years, a moderate-term marriage is a marriage having a duration between ~~of greater than~~ 10 ~~7~~ years and 20 ~~but less than 17~~ years, and a long-term marriage is a marriage having a duration of 20 ~~17~~ years or longer ~~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.

(6)~~(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 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.

(7)(a)~~(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 (8), 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.

(8)(a) ~~(7)~~ 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 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 in accordance with s. 61.14. Durational alimony may not be awarded following a marriage lasting fewer than 3 years. ~~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 a ~~the~~ marriage lasting between 3 and 10 years, 60 percent of the length of a marriage lasting between 10 and 20 years, or 75 percent of the length of a marriage lasting 20 years or longer. However, if the party seeking alimony is either medically needy under part III of chapter 409 and related rules or is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, the court may extend durational alimony beyond the thresholds established in this subsection based on the duration of the marriage until the death of the child or until the court determines that there is no longer a need for durational alimony. 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. 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.

(b) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony or reduce or terminate an existing award of alimony. The court must make written finding of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in subsection (3) and all of the following factors:

1. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in such conduct as using the same last name, using a common mailing address, referring to each other in terms such as "my husband," "my wife," "my partner," or "my fiance," or otherwise conducting themselves in a manner that evidences a permanent or longstanding committed and supportive relationship.

2. Whether the obligee has resided with the other person

and, if so, for what period of time.

3. The extent to which the obligee and the other person have pooled their income or assets, have acquired or maintained joint bank or financial accounts, or have otherwise exhibited financial interdependence.

4. The extent to which the obligee or the other person has financially or economically supported the other, in whole or in part.

5. The extent to which the obligee or the other person has performed financial or economic services for the other.

6. The extent to which the obligee or the other person has performed services for the other's business entity or employer.

7. The extent to which the obligee and the other person have together acquired any assets or created or enhanced anything of value.

8. The extent to which the obligee and the other person have jointly contributed to the purchase of any real or personal property.

9. Evidence that the obligee and the other person have an express or implied agreement regarding property sharing or financial support.

10. The extent to which the obligee and the other person have provided support to the children of one or the other, regardless of any legal duty to do so.

11. Whether the obligee and the other person are engaged to be married.

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 those relationships do exist which 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 this paragraph.

(c) In the event that the party obliged to pay alimony reaches 65 years of age or the customary retirement age for his or her profession before the end of the durational period indicated by paragraph (a), the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The payor files a notice of retirement and intent to terminate alimony with the court and personally serves the alimony recipient or his or her last known attorney of record at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply.

If the conditions of this paragraph are met, the obligor's obligation to pay alimony ends 1 year after the date of filing of the notice of retirement and intent to terminate alimony or on the date the obligor reaches 65 years of age, whichever occurs later. However, if the obligor continues to work beyond

his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(d) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.

(9) 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)1. As a result of the dissolution of marriage, the party seeking alimony would have an income less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties; or

2. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically

disabled child who is common to the parties or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(10) Notwithstanding any other 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.

(11) 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.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, 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 that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a)~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall consider any alimony payments made to the obligee after the date of filing of a petition for dissolution of marriage, either voluntarily or pursuant to a court order, in determining the amount and length of an award of rehabilitative or durational alimony.

(15) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of

marriage filed on or after July 1, 2022.

Section 3. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should deny or reduce an initial award of alimony or reduce or terminate an existing award of alimony.

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 must make written findings of fact concerning the circumstances of the supportive relationship, including, but not

limited to, the factors set forth in s. 61.08(8)(b) ~~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," or otherwise conducting themselves in a manner that evidences a permanent 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.~~

~~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.~~

~~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~~.

(11)

(c) An obligor's subsequent remarriage or cohabitation does 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 of the obligor's subsequent spouse or the 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) Up to 12 months before seeking to terminate alimony

as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee or his or her last known attorney of record with such notice.

(b) The obligee shall have 20 days after the date of service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings

regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) 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 65 years of age, 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 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 since the final judgment of dissolution of marriage, including any income generated by such assets and retirement assets from which the obligee can access income without incurring early withdrawal penalties, and the obligee's role in the depletion or

conservation of any assets.

(g) Up to 12 months before the obligor's anticipated retirement under paragraph (f), 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 (f) 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) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

Section 4. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage, ~~,~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at

an earlier date.

(2) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of marriage, the court shall, upon request of either party, grant a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter temporary orders necessary to protect the parties and their children, if any, which orders remain effective until all other issues are adjudicated by the court. This subsection applies to all petitions for dissolution of marriage filed on or after July 1, 2022.

Section 5. The court shall apply this act to any action pending on or after July 1, 2022.

Section 6. This act shall take effect July 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that **Senate Bill #1796**, relating to Dissolution of Marriage, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

1/24/22
Meeting Date

Judiciary
Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

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City State Zip

FAMILY LAW SECTION OF THE FL BAR

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Judiciary
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: FL NOW

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1-24-22
Meeting Date

Judiciary
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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Judiciary
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1/24/22
Meeting Date

Judiciary
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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01/24/22
Meeting Date

Judiciary
Committee

SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1-24-2022
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Judiciary
Committee

1796
Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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1/24/2022	SB 1796
Meeting Date	Bill Number or Topic
Judiciary	
Committee	Amendment Barcode (if applicable)

Name Shannon Novey850224 Phone 850-224-4000 ext 107

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Tallahassee FL 32301

City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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SB 1796
Bill Number or Topic

Amendment Barcode (if applicable)

Name Camille Fivegash

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Email Private

Milton
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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 536
INTRODUCER:	Senator Diaz
SUBJECT:	Administrative Procedures
DATE:	January 21, 2022
REVISED:	

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

I. Summary:

SB 536 amends the Administrative Procedures Act (APA). The act contains a uniform set of procedures that agencies must follow when exercising rulemaking authority delegated by the Legislature. This bill amends the APA rulemaking process and provides a new mechanism for agencies to review, revise, and repeal their rules. The bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines substantive changes to update a rule are not required, the agency must repromulgate the rule.
- Specifies the economic impacts and compliance costs an agency must consider in creating a statement of estimated regulatory costs (SERC). Each agency is required to have a website where each of its SERCs may be viewed in their entirety.
- Requires an agency, in all notices of rulemaking which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the Department of State with the full text available for free public access through an electronic hyperlink.
- Requires changes to material incorporated by reference to be in a strike-through and underline format.
- Requires the annual regulatory plan to identify and describe each rule, by rule number or proposed rule number, which the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The bill also requires the annual regulatory plan to contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted.
- Specifies that an adverse impact on small business exists if certain specific criteria is met.
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule *or* a notice of change.

- Defines the term "technical change" and requires technical changes to be documented in the history of the rule.
- Requires a notice of rule development and a notice of proposed rule to include the proposed rule number.
- Requires a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.
- Requires the Joint Administrative Procedures Committee to review all existing rules.

II. Present Situation:

The Administrative Procedures Act - Overview

The Administrative Procedure Act, which is commonly referred to as the "APA," is contained in Chapter 120, F.S. The first version of the APA was adopted in 1961 in an attempt to produce a comprehensive and uniform administrative process, or framework, to govern executive branch agency actions. The "modern version" of the APA was adopted in 1974 and is amended almost every year. In addition to creating a standardized process for agencies to enact rules and issue orders, the act also provides citizens the opportunity to be involved and challenge agency decisions.[1]

The Florida Constitution vests in the Legislature the sole authority to create laws.[2] However, the Legislature may delegate to agencies in the Executive branch the quasi-legislative ability, or authority, to create rules and not be in violation of the separation of powers doctrine. Almost 100 years ago, in 1930, the Florida Supreme Court noted

> The Legislature is in session only during limited periods, and statutes cannot always anticipate and provide for complicated and contingent conditions in governmental affairs; therefore functions that are quasi legislative in their nature are with appropriate limitations conferred by statute upon administrative officers to effectuate the statutory purpose.[3]

The Legislature establishes the regulatory program to be implemented and the agencies supply the details. Even though rules are created by executive agencies, it is the legislative branch that maintains ownership over the product that is eventually adopted and promulgated.[4] When the Legislature enacts statutes granting power to the executive branch, the statutes "must clearly announce adequate standards to guide … in the execution of the powers delegated."[5]

The First District Court of Appeal noted in *Gopman v. Department of Education*,[6] that the APA "presumptively governs the exercise of all authority statutorily vested in the executive branch of

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[1] Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, 1 (2020), https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf.
[2] FLA. CONST. art III, s. 1.
[3] *Florida Motor Lines, Inc., v. Railroad Commissioners*, 129 So. 876, 881 (Fla. 1930), and note 1, *supra*.
[4] Joint Administrative Procedures Committee, The Florida Legislature, *An Overview of Chapter 120 Rulemaking*, (Jan. 28, 2021) (on file with the Senate Committee on Judiciary).
[5] *Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004) quoting *Lewis v. Bank of Pasco County*, 346 So. 2d 53, 55-56 (Fla 1976).
[6] *Gopman v. Dep't of Educ.,* 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005).

state government." Accordingly, the Administrative Procedures Act is the "mechanism used by state agencies to adopt rules."[7]

A detailed description of the present situation for each section of the bill is included in the "Effect of Proposed Changes" section of this bill analysis.

III. Effect of Proposed Changes:

Rulemaking

Present Situation

Delegation of Authority

The Legislature, as the sole branch of government having the inherent power to create laws,[8] may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.[9] As the Florida Supreme Court has noted

> Rulemaking is a derivative of lawmaking. An agency is empowered to adopt rules if two requirements are satisfied. First, there must be a statutory grant of rulemaking authority, and second, there must be a specific law to be implemented.[10]

The Administrative Procedure Act (APA)[11] sets forth the uniform set of procedures agencies must follow when exercising delegated rulemaking authority.

Rules

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[12]

Rulemaking Authority

Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"[13] rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."[14] Agencies do not have the discretion in and of themselves to engage in rulemaking.[15] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[16] The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking

[7] *See supra* note 4.
[8] Article III, s. 1, FLA. CONST.; *see also* art. II, s. 3, FLA. CONST.
[9] *See Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011),
[10] *Id*.
[11] Chapter 120, F.S.
[12] Section 120.52(16), F.S.
[13] Section 120.52(17), F.S.
[14] *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).
[15] Section 120.54(1)(a), F.S.
[16] Sections 120.52(8) and 120.536(1), F.S.

must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[17]

Rulemaking Process - Filing a Notice of Rule Development

An agency begins the formal rulemaking process[18] by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the proposed rule.[19] The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals.

Rulemaking Process - Filing a Notice of Proposed Rule

Next, an agency must file, upon approval of the agency head, a notice of proposed rule.[20] The notice of proposed rule is published by the Department of State (DOS) in the FAR[21] and must contain the full text of the proposed rule or amendment and a summary thereof.[22] Before 2012, the FAR was published weekly, resulting in a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.[23] In 2012, the Legislature passed HB 541 (2012) that changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven-day period between the two notices.[24]

Agency Hearing

After publication of a notice of proposed rule, an agency must hold a hearing on the proposed rule if a person requests a hearing within 21 days.[25] If, after the hearing is held or after the time for requesting a hearing has expired, the agency does not change the rule, other than a technical change, the agency must file a notice stating no changes have been made to the rule with the Joint Administrative Procedures Committee (JAPC) at least seven days before filing the rule for adoption.[26] However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.[27]

Petition Alternative

As an alternative to the agency initiated process delineated above, a person regulated by the agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.[28] The petitioner must specify the proposed rule and action requested.[29]

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[17] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

[18] Alternatively, a person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7)(a), F.S.

[19] Section 120.54(2)(a), F.S.

[20] Section 120.54(3), F.S.

[21] Section 120.55(1)(b), F.S.

[22] Section 120.54(3)(a)1., F.S.

[23] Chapter 2012-63, L.O.F.

[24] *Id.*

[25] Section 120.54(3)(c), F.S.

[26] Section 120.54(3)(d)1., F.S.

[27] *Id.*

[28] Section 120.54(7)(a), F.S.

[29] *Id.*

The agency can either initiate rulemaking or decline to do so; however, if the agency chooses the latter, it must issue a written statement of the reasons for the denial.[30]

Rule Adoption

Once an agency has completed the steps of rulemaking, the agency may file for rule adoption with DOS and the rule becomes effective 20 days later, unless a different date is indicated in the rule.[31] Most adopted rules are published in the Florida Administrative Code (FAC).[32]

Challenging a Rule for Invalid Delegation of Authority

The validity of a rule or a proposed rule may be challenged at the Division of Administrative Hearings (DOAH)[33] as an invalid delegation of legislative authority.[34] An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.[35] A rule or proposed rule is an invalid delegation of legislative authority if any of the following applies:

- The agency has materially failed to follow the rulemaking procedures or requirements in the APA.
- The agency has exceeded its grant of rulemaking authority.
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented.
- The rule is vague, fails to establish adequate standards for agency decisions, or vests the agency with unbridled discretion.
- The rule is arbitrary or capricious.
- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.[36]

Hearing Before Administrative Law Judge

An administrative law judge (ALJ) at DOAH hears the rule challenge in a de novo proceeding and, within 30 days after the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard. The petitioner and the agency whose rule is challenged are adverse parties.[37] The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,[38] but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.[39]

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[30] *Id.*
[31] Section 120.54(3)(e)6., F.S.
[32] Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.
[33] DOAH is an agency in the executive branch, administratively housed under the Department of Management Services but not subject to its control. DOAH employs administrative law judges who serve as neutral arbiters presiding over disputes arising under the APA. Section 120.65, F.S.
[34] Section 120.56(1), F.S.
[35] Section 120.52(8), F.S.
[36] Section 120.52(8)(a)-(f), F.S.
[37] Section 120.56(1)(e), F.S.
[38] *Id.*
[39] Section 120.68(2)(a), F.S.

Effect of Proposed Changes (Section 2)

The bill requires a notice of proposed rule to be filed within 12 months after a notice of rule development. If a notice of proposed rule is not filed within 12 months after the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next issue of the FAR. The bill also reestablishes the mandatory seven-day period between the publication of a notice of rule development and the publication of a notice of proposed rule in the FAR.

The bill further requires that a proposed rule be withdrawn if, *after issuing a notice of proposed rule*, the agency fails to adopt it within the prescribed timeframes in the APA. Once an agency has exceeded the timeframe to adopt the rule, the bill requires JAPC to notify the agency of the failure. If the agency has not withdrawn the rule within 30 days following the notice, JAPC must notify DOS that the date for adoption of the rule has expired. DOS must then publish a notice of withdrawal of the proposed rule.

The bill requires a notice of rule development and a notice of proposed rule to include the proposed rule number.

The bill also requires an agency to file a copy of a petition to initiate rulemaking with JAPC.

Finally, the bill defines the term "technical change" to mean a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Joint Administrative Procedures Committee (JAPC)

Present Situation

Background

JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.[40] Specifically, JAPC may examine existing rules and must examine each proposed rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority.
- The statutory authority for the rule has been repealed.
- The rule reiterates or paraphrases statutory material.
- The rule is in proper form.
- The notice given prior to adoption was sufficient.
- The rule is consistent with expressed legislative intent.
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements.
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.
- The rule could be made less complex or more easily comprehensible to the general public.
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or

[40] Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.
- The rule will require additional appropriations.[41]

Effect of Proposed Changes (Section 5)

The bill removes the permissive authority of JAPC to examine existing rules and makes such examination mandatory to align with JAPC's mandate to examine proposed rules.

Agency Review of Rules

Present Situation

The APA requires each agency to annually review its rules.[42] Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Effect of Proposed Changes (Section 4)

The bill creates a process called "repromulgation," whereby each agency is required to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing the rule, the agency determines that substantive changes are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines the term "repromulgation" to mean the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute. Each agency must review its rules according to the following schedule:
- If the rule was adopted *before* January 1, 2014, within five years after July 1, 2022; or
- If the rule was adopted on or *after* January 1, 2014, within 10 years after the rule is adopted.

An agency, before repromulgation of a rule and upon approval of its agency head, must:
- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and
- File the rule with DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with JAPC at least 14 days before filing the rule with DOS. JAPC must certify at the time of filing whether the agency has responded to all of JAPC's material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge as a proposed rule.

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with DOS and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its filing with DOS and becomes effective 20 days later. DOS must then update the history note of the rule in the FAC to reflect the new effective date. The bill requires DOS to adopt rules to implement the bill's repromulgation provision by December 31, 2022.

[41] Section 120.545(1), F.S.
[42] *See* 120.74, F.S.

If an agency fails to meet the deadline to review the rule or the timeframe to file the rule for repromulgation, the rule is deemed repealed. After such a failure, JAPC notifies DOS that the agency has elected to repeal the rule. Thereafter, DOS must publish a notice of the repeal in the next issue of the FAR and the rule is then stricken from the files of DOS and the agency.

Statement of Estimated Regulatory Cost

Present Situation

A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[43] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[44] However, a SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate in this state within one year after implementation of the rule.[45] If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[46]

A SERC must include:
- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, small counties, and small municipalities.[47]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years after implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[48]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[49]

[43] Section 120.541(2), F.S.
[44] Section 120.54(3)(b)1., F.S.
[45] *Id.*
[46] Section 120.541(1)(c), F.S.
[47] Section 120.541(2)(b)-(e), F.S.
[48] Section 120.541(2)(a), F.S.
[49] Section 120.541(3), F.S.

An agency's failure to prepare a SERC can be raised in a proceeding at DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[50]

Effect of Proposed Changes (Section 3)

The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety. DOS must include on the FAR website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of proposed rule the agency website address where the SERC can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the FAR website.

The bill clarifies the elements an agency must consider in a SERC when evaluating the economic impacts of the rule. Specifically, the bill requires agency estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule to consider elements such as:

- Increased or decreased consumer prices or value of goods and services;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Other impacts suggested by the rules ombudsman or interested persons.

In addition, the bill replaces the term "transactional costs" with "compliance costs," requires agencies to consider all direct and indirect costs of compliance, and provides 18 specific types of compliance costs as examples for agencies to consider in their evaluation, including:

- Filing fees;
- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, and information management processes, as well as other administrative processes;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead costs.

The bill allows agencies to survey individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate and analyze the costs and impacts of the proposed rule. Each notice of proposed rule must also contain a summary of the SERC describing the regulatory impact of the proposed rule in readable language. Additionally, if an agency holds a hearing on a proposed rule, the bill requires the agency to ensure that the person responsible for preparing the SERC be made available to respond to questions or comments.

[50] Section 120.541(1)(f), F.S.

Lower Cost Regulatory Alternative

Present Situation

A person substantially affected by a proposed rule may, within 21 days after the publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).[51] The LCRA must be a written proposal, made in good faith, which substantially accomplishes the objectives of the law being implemented.[52] A LCRA may recommend that a rule not be adopted at all, if it explains how the "lower costs and objectives of the law will be achieved by not adopting any rule."[53] If a LCRA is submitted to an agency, the agency must prepare a SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.[54] Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.[55] At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to JAPC and must provide notice on the agency's website that it is available to the public.[56]

Just as in the case of an agency's failure to prepare a SERC, an agency's failure to respond to a LCRA may be raised in a proceeding at DOAH to invalidate a rule as an invalid delegation of legislative authority if it is raised within 1 year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[57]

Effect of Proposed Changes (Section 3)

The bill specifies that a LCRA may be submitted after a notice of proposed rule or a notice of change. If submitted after the latter, the LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule as *changed by the notice of change* increases the regulatory costs or creates an adverse impact on small business.

The bill allows an agency receiving a LCRA to have the choice of modifying the proposed rule to reduce regulatory costs in addition to either adopting the LCRA or stating its reasons for rejecting it in favor of the proposed rule. If the rule is modified, the agency must revise its SERC, if one has been prepared. If the agency rejects the LCRA or modifies the proposed rule, the agency must state its reasons for rejecting the LCRA in favor of the proposed or modified rule. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a LCRA, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman, the party that submitted the LCRA, and JAPC, and must be published in the same manner as the original SERC.

[51] Section 120.541(1)(a), F.S.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Section 120.541(1)(d), F.S.
[57] Section 120.541(1)(f), F.S.

The bill requires an agency to provide a copy of a LCRA to JAPC at least 21 days before filing the rule for adoption.

Emergency Rules

Present Situation

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.[58] Emergency rules are not adopted using the same procedures required of other rules.[59] The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.[60] The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.[61] The agency's findings of immediate danger are judicially reviewable.[62] Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in rule,[63] but are only effective for a period of no longer than 90 days.[64] An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rules are awaiting ratification by the Legislature.[65]

Effect of Proposed Changes (Sections 2 and 3)

The bill requires emergency rules to be published in the FAC. The bill also allows an agency to make technical changes to the emergency rule within the first seven days after adoption and prohibits an agency from superseding an emergency rule currently in effect. The bill clarifies that an emergency rule is not subject to the legislative ratification process.[66]

Small Business Impact in Rulemaking

Present Situation

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.[67] If the agency determines that the proposed action will affect small

[58] Section 120.54(4), F.S.
[59] Section 120.54(4)(a), F.S.
[60] Section 120.54(4)(a)3., F.S.
[61] *Id.*
[62] *Id.*
[63] Section 120.54(4)(d), F.S.
[64] Section 120.54(4)(c), F.S.
[65] *Id.*
[66] In 2011, the Legislature passed two bills, CS/CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.541(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted, leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.
[67] Section 120.54(3)(b)2., F.S.

businesses, the agency must send written notice to the rules ombudsman[68] in the Executive Office of the Governor at least 28 days before the intended action.[69] The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and would reduce the impact on small businesses.[70]

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with JAPC explaining the reasons for failure to adopt such alternatives.[71]

Effect of Proposed Changes (Section 2)

The bill requires an adverse impact on small business to be found if:

- An owner, officer, operator, or manager of a small business must complete any education, training, or testing to comply with the proposed rule in the first year;
- An owner, officer, operator, or manager of a small business is likely to expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in one year because of the rule;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required;
- Operating costs are expected to increase by at least $1,000 annually; or
- Capital expenditures in excess of $1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

Incorporation by Reference

Present Situation

The APA allows an agency to incorporate material external to the text of the rule by reference.[72] The material to be incorporated must exist on the date the rule is adopted.[73] If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself

[68] The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S

[69] Section 120.54(3)(b)2.b.(I), F.S.

[70] Section 120.54(3)(b)2.b.(II), F.S.

[71] Section 120.54(3)(b)2.b.(III), F.S.

[72] Section 120.54(1)(i)1., F.S.; *see also* r. 1-1.013, F.A.C.

[73] Section 120.54(1)(i)1., F.S.

must be amended for the change to be effective.[74] However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.[75] A rule cannot be amended by reference only.[76] An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.[77]

The DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.[78] The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.[79]

Effect of Proposed Changes (Section 2)

Beginning July 1, 2022, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink. Alternatively, if an agency determines that posting the incorporated material on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at DOS and the agency at which the material is available for public inspection and examination.

The bill requires DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through.

Annual Regulatory Review

Present Situation

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.[80] The plan must also include a list of each additional law not otherwise listed that the agency expects to

[74] *Id.*
[75] Section 120.54(1)(i)2., F.S.
[76] Section 120.54(1)(i)4., F.S.
[77] Section 120.54(1)(i)3., F.S.
[78] Rule 1-1.013, F.A.C.
[79] Rule 1-1.013(5)(d), F.A.C.
[80] Section 120.74(1)(a), F.S.

implement by rulemaking before the following July 1, except emergency rules.[81] The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.[82] By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan.[83] The agency must also deliver a copy of the certification to JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.[84]

Effect of Proposed Changes (Section 7)

The bill replaces the requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with the requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12 month period beginning October 1 and ending September 30. The annual regulatory plan must identify any rules required to be repromulgated for the 12-month period.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted. The bill requires the declaration to contain the total number of rules adopted and repealed during the previous 12 months.

Florida Administrative Code

Present Situation

The FAC is an electronic compilation of all rules adopted by each agency and maintained by DOS.[85] DOS retains the copyright over the FAC.[86]

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented.[87] Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.[88] DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency.
- The manner by which the agency indexes its rules.

[81] Section 120.74(1)(b), F.S.
[82] Section 120.74(1)(d), F.S.
[83] Section 120.74(2)(a)1., F.S.
[84] Sections 120.74(2)(a)2. and 120.74(2)(a)3., F.S.
[85] Section 120.55(1)(a)1., F.S.
[86] *Id.*
[87] *Id.*
[88] Section 120.55(1)(a)2., F.S.

- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.[89]

DOS is required to adopt rules allowing adopted rules and materials incorporated by reference to be filed in electronic form.[90] Further, DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.[91] The rule DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.[92]

Effect of Proposed Changes (Section 6)

The bill requires the FAC be published once daily, by no later than 8 a.m. If, after publication, a rule is corrected and replaced, the FAC must indicate the rule has been republished and indicate DOS has corrected it. The bill also requires the history note appended to each rule include the date of any technical changes to the rule and provides such change does not affect the rule's effective date.

Remaining Sections

Sections 8, 9, 10, 11, and 12 are amended to incorporate technical changes to conform cross-references in the bill.

The bill takes effect July 1, 2022.

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.

[89] Section 120.55(1)(a)3., F.S.
[90] Section 120.55(1)(a)5., F.S.
[91] Section 120.55(1)(c), F.S.
[92] Rule 1-1.010(5)(a), F.A.C. *referencing* r. 1-1.011(3)(c), F.A.C.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 536 requires each agency to review and repromulgate its rules, includes additional requirements to comply with notice, publication, and hearing requirements of rules, and includes additional requirements for SERCs. Agencies will likely be required to spend funds to implement the requirements of the bill. Whether these new requirements could be absorbed within each agency's existing resources is not known. For example, regulatory agencies such as the Department of Business and Professional Regulation and the Department of Health may need additional personnel to comply with repromulgation of rules. However, the bill specifies that agencies have to complete rule review within five years for rules adopted before January 1, 2014 and within 10 years for rules adopted after January 1, 2014. Agencies should have sufficient time to request additional funding or personnel through the Legislative Budget Request process should it be determined additional funding or personnel will be required to implement the provisions of the bill.

VI. Technical Deficiencies:

Several sections of the bill could be revised for clarity or consistency.

- Line 120 – The definition of "repromulgation" should be amended for consistency with the provisions in line 891 by adding the phrase "of a notice of repromulgation" so that the definition would read:
  (16) "Repromulgation" means the publication of a notice of repromulgation and adoption of an existing rule following an agency's review of the rule for consistency with the powers an duties granted by its enabling statute.
- Lines 206-209 should be amended to clarify that a notice of a proposed rule is "published" rather than "filed."
- Lines 918 – 957 contain s. 120.545, F.S., "Committee review of agency rules." This provision could be amended to give JAPC permission to examine a rule that has not been reviewed and amended, repealed, or repromulgated pursuant to the deadlines set forth in s. 120.5435, F.S. As such, the failure to repromulgate would result in an objection by JAPC rather than an automatic repeal.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.52, 120.54, 120.541, 120.545, 120.55, 120.74, 120.80, 120.81, 420.9072, 420.9075, and 443.091.
This bill creates section 120.5435 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.

By Senator Diaz

36-00345-22 2022536__

A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; defining terms; amending s. 120.54, F.S.; applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring a notice of rule development to include certain information; requiring a notice of withdrawal if a notice of proposed rule is not filed within a certain timeframe; requiring that certain persons be available at a workshop or public hearing to receive public input; requiring a notice of proposed rule to include certain information; requiring certain notices to be published within a specified timeframe; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have requested advance notice of agency rulemaking proceedings; revising the circumstances under which a proposed rule's adverse impact on small businesses is considered to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking timelines are tolled during such separate proceedings; requiring a notice of change for certain changes to a statement of estimated regulatory costs; revising the requirements for the contents of a notice of change;

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requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring that certain information be available on the agency's website; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency rules by superseding the rule; authorizing an agency to make technical changes to an emergency rule during a specified timeframe; requiring an agency to file a copy of a certain petition with the committee; amending s. 120.541, F.S.; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such a proposal is made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to certain circumstances; requiring that a revised statement of lower cost regulatory alternative be submitted to the rules ombudsman and published in a specified manner; revising the information required in a statement of estimated regulatory costs; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation

of estimated regulatory costs; requiring the department to include specified information on a website; requiring certain agencies to include certain information in a statement of estimated regulatory costs and on their websites; providing certain requirements for an agency that revises a statement of estimated regulatory costs; conforming a cross-reference; creating s. 120.5435, F.S.; providing legislative intent; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; providing that failure of an agency to meet certain deadlines applicable to a rule required to be repromulgated constitutes the repeal of the rule; requiring an agency to publish a notice of repromulgation in the Florida Administrative Register and file a rule for promulgation with the department within a specified timeframe; requiring an agency to file a notice of repromulgation with the committee within a specified timeframe; providing requirements for the notice of repromulgation; providing that a repromulgated rule is not subject to challenge as a proposed rule and that certain hearing requirements do not apply; requiring an agency to file a specified number of certified copies of a proposed repromulgated rule and any material incorporated by reference; providing that a repromulgated rule is adopted upon filing with the department and becomes effective after a specified time; requiring the department to update

certain information in the Florida Administrative Code; requiring the department to adopt rules by a certain date; amending s. 120.545, F.S.; requiring, rather than authorizing, the committee to examine existing rules; amending s. 120.55, F.S.; requiring the Florida Administrative Code to be published once daily and indicate certain information; requiring materials incorporated by reference to be filed in a specified manner; requiring the department to include the date of a technical change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring specified rulemaking; amending s. 120.74, F.S.; requiring an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan; requiring that an agency's annual regulatory plan identify any rules required to be repromulgated during the forthcoming year; requiring the agency to make certain declarations concerning the annual regulatory plan; amending ss. 120.80, 120.81, 420.9072, 420.9075, and 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (16) through (19) and (20) through (22) of section 120.52, Florida Statutes, are redesignated as subsections (17) through (20) and subsections

(22) through (24), respectively, and new subsections (16) and (21) are added to that section, to read:

120.52 Definitions.—As used in this act:

(16) "Repromulgation" means the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute.

(21) "Technical change" means a change limited to correcting grammatical, typographical, or similar errors not affecting the substance of the rule.

Section 2. Paragraph (i) of subsection (1), subsections (2) and (3), and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (4) of that section, to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, and rules

repromulgated on or after July 1, 2022, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other

agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency does ~~shall~~ not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a)1. Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development must ~~shall~~ indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority for the proposed rule and the law being implemented ~~specific legal authority for the proposed rule~~, and include the proposed rule number and the preliminary text of the proposed rules, if available, or a statement of how

a person may promptly obtain, without cost, a copy of any preliminary draft, when ~~if~~ available.

2. If a notice of a proposed rule is not filed within 12 months after the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next available issue of the Florida Administrative Register.

(b) All rules must ~~should~~ be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency

may employ other types of dispute resolution alternatives for the workshop which ~~that~~ are appropriate for rule development. Notice of a workshop for rule development must ~~workshop shall~~ be by publication in the Florida Administrative Register not less than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking which ~~that~~ includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall

be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the rule number and full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a concise summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2). The notice must describe the regulatory impact of the rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as

provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, if one has been prepared, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. Material proposed to be incorporated by reference in the notice must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes

of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the adoption , amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

(I) An owner, an officer, an operator, or a manager must complete any education, training, or testing to comply with the rule in the first year or is likely to spend at least 10 hours or to purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least $1,000 annually because of the rule; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if the agency ~~it~~ finds that such a definition is

necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I)~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency must ~~shall~~ send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are

offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. The agency shall provide notice to the committee of any regulatory alternative offered to the agency pursuant to this sub-subparagraph at least 21 days before filing the rule for adoption.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs, if one has been prepared, ~~staff~~ are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, if

one has been prepared, and the agency's decision whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking

proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after the conclusion of the separate proceeding.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule text has not been changed from that of the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to the text of ~~is made in~~ a proposed rule or any material incorporated by reference requires~~, other than a technical change,~~ the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with

the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision to a statement of estimated regulatory costs required by s. 120.541(1)(c). This subparagraph does not apply to emergency rules adopted pursuant to subsection (4). Material proposed to be incorporated by reference in the notice required by this subparagraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency must withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. The committee shall notify the agency that it has exceeded the timeframe to adopt the proposed rule. If, 30 days after notice by the committee, the agency has not given notice of the withdrawal of the rule, the committee must notify the Department of State that the date for adoption of the rule has expired, and the Department of State shall publish a notice of withdrawal of the proposed rule.

4.~~3.~~ After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.~~4.~~ The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.~~5.~~ After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, must ~~shall~~ file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any

hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the

period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule must ~~shall~~ withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted upon ~~on~~ being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by

subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules shall be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently in effect. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. Not later than 30

calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s. 120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses which was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise

its prior statement of estimated regulatory costs, and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency must ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth,

private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures~~

~~required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6)(a) In evaluating the impacts described in paragraphs (2)(a) and (2)(e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or interested persons.

(b) In estimating and analyzing the information required in paragraphs (2)(b)-(e), the agency may use surveys of

individuals, businesses, business organizations, counties, or municipalities to collect data useful to estimate and analyze the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule which are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including contracted services necessary to achieve and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the Executive Office of the Governor or any interested person, business organization, or business representative.

(7)(a) The Department of State shall include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs can be viewed in their entirety.

(b) As part of the notice required under s. 120.54(3)(a), an agency that prepares a statement of estimated regulatory costs must provide to the Department of State for publication in the Florida Administrative Register the agency website address where the statement of estimated regulatory costs can be read in its entirety.

(c) If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made as provided in s. 120.54(3)(d). Such notice must include the agency website address where the revision can be viewed in its entirety.

Section 4. Section 120.5435, Florida Statutes, is created to read:

120.5435 Repromulgation of rules.—

(1) It is the intent of the Legislature that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

(2) If an agency determines after review that substantive changes to update a rule are not required, the agency must

repromulgate the rule to reflect the date of the review. Each agency shall review its rules pursuant to this section either 5 years after July 1, 2022, if the rule was adopted before January 1, 2014, or 10 years after the rule was adopted, if the rule was adopted on or after January 1, 2014. Failure of an agency to adhere to the deadlines imposed in this section constitutes the repeal of any affected rule. In the event of such a failure, the committee shall notify the Department of State that the agency, by its failure to repromulgate the affected rule, has elected to repeal the rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Register. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(3) Before repromulgation of a rule, the agency must, upon approval by the agency head or his or her designee:

(a) Publish a notice of repromulgation in the Florida Administrative Register. A notice of repromulgation is not required to include the text of the rule being repromulgated.

(b) File the rule for repromulgation with the Department of State. A rule may not be filed for repromulgation fewer than 28 days, nor more than 90 days, after the date of publication of the notice required by paragraph (a).

(4) The agency shall file a notice of repromulgation with the committee at least 14 days before filing the rule for repromulgation. At the time the rule is filed for repromulgation, the committee shall certify whether the agency has responded in writing to all material and timely written

comments or written inquiries made on behalf of the committee.

(5) A repromulgated rule is not subject to challenge as a proposed rule pursuant to s. 120.56(2).

(6) The hearing requirements of s. 120.54 do not apply to repromulgation of a rule.

(7)(a) The agency, upon approval of the agency head or his or her designee, shall file with the Department of State three certified copies of the repromulgated rule it proposes to adopt and one certified copy of any material incorporated by reference in the rule.

(b) The repromulgated rule shall be adopted upon filing with the Department of State and becomes effective 20 days after the date it is filed.

(c) The Department of State shall update the history note of the rule in the Florida Administrative Code to reflect the effective date of the repromulgated rule.

(8) The Department of State shall adopt rules to implement this section by December 31, 2022.

Section 5. Subsection (1) of section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, ~~and may examine any existing rule,~~ for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

Section 6. Paragraphs (a) and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Florida Administrative Code shall be published once daily by 8 a.m. If, after publication, a rule is corrected and replaced, the Florida Administrative Code must indicate:

a. That the Florida Administrative Code has been republished.

b. The rule that has been corrected by the Department of State.

The Department of State shall retain the copyright over the

Florida Administrative Code.

2. Not publish in the Florida Administrative Code rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance ~~shall not be published in the Florida Administrative Code~~. Exclusion from publication in the Florida Administrative Code does ~~shall~~ not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, ~~the department shall~~ publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Not publish forms ~~shall not be published~~ in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of

the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule and in any part of a repromulgated rule ~~The department shall allow adopted rules and material incorporated by reference~~ to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b. ~~electronic form as prescribed by department rule.~~ When a rule is filed for adoption or repromulgation with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency which are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 120.74, Florida Statutes, are amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, ~~include a listing of each law not otherwise listed pursuant to paragraph (a)~~ which the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1~~, excluding emergency rules ~~except emergency rulemaking~~. For

each rule ~~law~~ listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must identify any rules required to be repromulgated pursuant to s. 120.5435 for the 12-month period beginning on October 1 and ending on September 30.

(e)~~(d)~~ The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the integrity of state government and, to that end, the agency is diligently working toward lowering the total number of rules adopted.

4. The total number of rules adopted and repealed during the previous 12 months.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(e) ~~(1)(d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

Section 8. Subsection (11) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

Section 9. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 10. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and

private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52 ~~s. 120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 11. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by

resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52 ~~s. 120.52(19)~~, and eligible municipalities receiving a local housing distribution of up to $350,000 may use up to 10 percent of program income for administrative costs.

Section 12. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the

initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least

80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52 ~~s. 120.52(19)~~, a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 13. This act shall take effect July 1, 2022.

Georgiades, Celia

From: Ruiz, Judith
Sent: Wednesday, November 3, 2021 5:00 PM
To: Cibula, Thomas; Brown, Natalie; Georgiades, Celia; Burgess, Danny
Subject: SB 536 Administrative Procedures

November 3, 2021

Honorable Senator Danny Burgess
Chair
Committee on Judiciary

Honorable Chair Burgess,

I respectfully request SB 536 Administrative Procedures be placed on the next committee agenda.

Administrative Procedures; Applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring an agency to identify and describe each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant
Nataly Brown, Legislative Assistant

Legislative Assistant/Chief of Staff
District 36
Senator Manny Diaz Jr.
10001 NW 87 Avenue
Hialeah, Florida 33016
305-364-3073

306 Senate Building
404 South Monroe Street
Tallahassee, Fl 32399-1100
850-487-5036

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022
Meeting Date

JUDICIARY
Committee

SB 534
Bill Number or Topic

/
Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Phone

Address PO BOX 122
Street

Email CHRISTIAN@CHAMBERCONSULTANTS FL.COM

TALLAHASSEE FL 32302
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
INSTITUTE FOR JUSTICE

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/24/22
Meeting Date

Judiciary
Committee

536
Bill Number or Topic

Amendment Barcode (if applicable)

Name Phillip Suderman Phone

Address Email

Street

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Americans for Prosperity

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 968
INTRODUCER:	Senator Polsky
SUBJECT:	Individual Retirement Accounts
DATE:	January 24, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 968 clarifies that any interest in an individual retirement account (IRA) or individual retirement annuity received in a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. As the bill clarifies, but does not modify, existing law or practice, the bill is remedial in nature and applies retroactively to all transfers made incident to divorce.

The bill is effective upon becoming a law.

II. Present Situation:

Asset Protections Available in Florida

A creditor, such as a hospital seeking outstanding debt from a patient, may collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect from the debtor, i.e., executing the judgement, using certain legal tools such as garnishing of wages and bank accounts and attaching liens[1] to personal and real property. Both the Florida Constitution and Florida Statutes contain exemptions to protect certain real and personal property of natural persons from forced sale by creditors. State constitutional exemptions, such as those for homestead property,[2] may be modified only through a proposed constitutional amendment that is subsequently approved by the electorate. Exemptions provided in Florida Statutes may be modified through the regular legislative process. Chapter 222, F.S., specifies the types of property that are exempt from the claims of creditors.

[1] A lien is a "security interest or legal right acquired in one's property by a creditor. A lien generally stays in effect until the underlying obligation to the creditor is satisfied. If the underlying obligation is not satisfied, the creditor may be able to take possession of the property involved." *See* Legal Information Institute, *Lien*, available at https://www.law.cornell.edu/wex/lien

[2] *See* FLA. CONST. art. X, s. 4.

Section 222.21, F.S., provides that pension money and certain tax-exempt funds or accounts are exempt from legal processes, such as forced sale. Subsection (1) protects certain money received by any debtor as a pensioner of the United States. Subsection (2) protects any money or other assets payable to an owner, a participant, or a beneficiary from, and any interest[3] therein of any owner, beneficiary, or participant if the fund or account meets certain qualifications. These funds or accounts are commonly known as qualified, tax-exempt retirement accounts, and must be:

- Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or other governing instrument preapproved by the Internal Revenue Service (IRS) as exempt from taxation under certain sections of the Internal Revenue Code of 1986 (IRC), as amended, regarding qualified retirement plans,[4] unless the exemption was overturned in a final, non-appealable, proceeding;
- Maintained in accordance with a plan or governing instrument determined by the IRS to be exempt from taxation under certain sections of the IRC regarding qualified retirement plans,[5] unless such exemption was overturned in a final, non-appealable, proceeding; or
- Not maintained in accordance with one of the above-described plans or governing instruments, if the person claiming the exemption proves by a preponderance of the evidence that the fund or account is maintained in substantial compliance with the applicable sections regarding tax-exempt retirement accounts, or would have been in substantial compliance with the applicable requirements for exemption under those sections, but for the negligent or wrongful conduct of another person.

The fund or account need not be maintained in accordance with a plan or governing instrument covered by any part of the Employee Retirement Income Security Act (ERISA) to be exempt.[6] The funds or accounts are protected only to the extent they are not otherwise subject to claims of an alternate payee under a qualified domestic relations order, or claims of a surviving spouse pursuant to an order determining elective share and contribution in accordance with ch. 732, F.S.

Paragraph (2)(c) of s. 222.21, F.S., provides that the exemption for such money, other assets, or interest in these qualified, tax-exempt retirement accounts survives the owner's death upon a direct transfer or other eligible rollover excluded from gross income under the IRC,[7] such as, but not limited to, the direct transfer or eligible rollover to an inherited individual retirement account (IRA).[8] This allows a beneficiary to enjoy the exemption upon transfer. Paragraph (2)(c) expressly states that it is intended to clarify existing law, be remedial in nature, and apply retroactively to all inherited individual retirement accounts without regard to the date the account was created.

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[3] Under Florida law, the word "interest," as used in statute providing exemption from creditors' claims for any interest of owner, beneficiary, or participant in enumerated tax-preferred funds or accounts, is a broad term encompassing many rights of a party, tangible, intangible, legal, and equitable. *In re Maddox*, 713 F.2d 1526, 1530 (11th Cir. 1983).

[4] 26 U.S.C. ss. 401(a) (stock bonus, pension, and profit sharing plans), 403(a) and 403(b) (annuity plans), 408 (individual retirement accounts (IRAs), 408A (Roth IRAs), 409 (tax credit employee stock ownership plans), 414 (provides definitions and special rules for certain plans, such as retirement plans for government and church employees), 457(b) (deferred compensation plans), or 501(a) (defining organizations exempt from taxation, including those defined in 401(a)).

[5] *Id*.

[6] Section 222.21(2)(b), F.S.

[7] Section 222.21(2)(c), F.S.

[8] *See* 26 U.S.C. s. 408(d)(3); pursuant to s. 222.21(2), F.S., individual retirement accounts, and interests therein, maintained in accordance with 26 U.S.C. s. 408 are exempted from legal processes, such as forced sale by creditors.

The specified tax-exempt retirement plans enumerated in subsection (2) are exempt from all legal proceedings, including bankruptcy, even though bankruptcy is a federal proceeding governed by the United States Bankruptcy Code (Bankruptcy Code).[9]

Transfer of Section 408 Retirement Accounts Incident to Divorce

Retirement accounts exempted from taxation by s. 408 of the IRC are exempted from legal processes, such as forced sale, by Florida law.[10] Section 408 of the IRC contemplates individual retirement accounts (IRAs) and individual retirement annuities.[11] An individual retirement account is a trust created or organized in the United States for the exclusive benefit of an individual, or his beneficiaries, of which the governing document meets certain requirements.[12] An individual retirement annuity is an annuity contract, or an endowment contract, issued by an insurance company which meets certain requirements.[13] An interest in an individual retirement account or individual retirement annuity may be transferred, but only upon the death or divorce of the original owner.[14] The transfer of an interest in an individual retirement account or individual retirement annuity incident to divorce is not a taxable event.[15] Effective upon such transfer, the interest in the individual retirement account or individual retirement annuity is treated as the account of the spouse.[16]

Exempted Property in Bankruptcy Proceedings

The Federal Bankruptcy Code expressly recognizes exemptions provided under the state or local law of the domicile of the debtor.[17] Florida is an opt-out state, meaning that when a Florida resident files for bankruptcy, Florida law provides the exemptions available to the resident—instead of the Bankruptcy Code.[18] Florida law contains a number of exemptions included in the Bankruptcy Code, such as IRAs and pensions, profit sharing, and retirement benefits.[19] Florida also exempts all inherited IRA accounts from creditor claims.[20] Likewise, the Bankruptcy Code exempts retirement funds in a fund or account exempt from taxation under most of the same sections of the IRC, such as those applicable to stock bonus, pension, and profit sharing plans, annuity plans, IRAs, and deferred compensation plans.[21]

[9] 11 U.S.C. s. 101, *et. seq.*; 11 U.S.C. s. 522(b)(3)(A).
[10] Section 222.21(2), F.S.
[11] 26 U.S.C. s. 408(a)-(c).
[12] *See* 26 U.S.C. s. 408(a), *et. seq.*
[13] 26 U.S.C. s. 408(b).
[14] 26 U.S.C. s. 408(d).
[15] 26 U.S.C. s. 408(d)(6).
[16] *Id.*
[17] 11 U.S.C. s. 522(b)(3)(A).
[18] Section 222.20, F.S.
[19] Section 222.21(2), F.S.
[20] Section 222.21(2)(c), F.S.
[21] 11 U.S.C. s. 522(d)(12) exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." Section 222.21(2), F.S., exempts qualified plans exempt from taxation under ss. 401(a), 403(a) and 403(b), 408, 408A, 414, 457(b), and 501(a) of the IRC. Unlike the Bankruptcy Code, Florida additionally exempts qualified tax credit employee stock ownership plans exempted from taxation under section 409 of the IRC.

Lerbakken Decision

A 2018 bankruptcy court decision may indicate a need to clarify Florida's exemption for an IRA for when an interest is awarded incident to a divorce. The United States Bankruptcy Appellate Panel for the 8th Circuit,[22] *In re Lerbakken*, 590 B.R. 895 (B.A.P. 8th Cir. 2018) found that two requirements must be satisfied in order for a debtor to claim funds as exempt retirement funds pursuant to the Bankruptcy Code:

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.[23]

The Bankruptcy Code does not define the term "retirement funds," so the term is applied within its ordinary meaning: "sums of money set aside for the day an individual stops working."[24] In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel held that funds held in 401K and IRA accounts awarded to a Chapter 7 debtor as part of a stipulated property settlement in a divorce proceeding were not "retirement funds" because while the debtor's former spouse had saved funds in those accounts for a joint retirement, any interest the debtor held in those accounts resulted from a property settlement. However, it is notable that the ruling was an 8th Federal Circuit opinion on appeal from the United States Bankruptcy Court for the District of Minnesota. Thus, the *Lerbakken* Court's ruling interpreting the meaning of "retirement funds" is not controlling in the 11th Circuit[25] (of which Florida is a part).

The issue of whether an IRA is exempt from bankruptcy proceedings when awarded incident to a divorce proceeding has arisen in the 11th Circuit recently.[26] During the course of the proceedings, the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, acknowledged that, although the authority to make the certification for appeal had shifted from Bankruptcy Court to the district court during the pendency of ruling on a motion for appeal, there did exist a "matter of public importance" on the IRA issue and "no controlling decision of the Eleventh Circuit or the Supreme Court exists."[27] Further, the Bankruptcy Court acknowledged that "conflicting opinions from other jurisdictions arguably exist."[28] Thus, the Bankruptcy Court had intended to certify the issue for appellate review.[29]

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[22] The United States Court of Appeals for the Eighth Circuit is a federal appellate court having jurisdiction in the following states: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. 28 U.S. Code § 41.
[23] 11 U.S.C. s. 522(d)(12).
[24] *Clark v. Rameker*, 573 U.S. 122, 127 (2014).
[25] The United States Court of Appeals for the Eleventh Circuit is a federal appellate court having jurisdiction in the following states: Alabama, Florida, and Georgia. 28 U.S. Code § 41.
[26] This case was dismissed without prejudice on upon the parties reaching settlement in the matter. *Carapella v. Glass*, No. 8:19-cv-3050-T-02 (M.D. Fla. Jan. 8, 2021). Thus, the Court did not reach a decision on the IRA issue.
[27] *In re Glass*, 613 B.R. 33, 41 (Bankr. M.D. Fla. 2020).
[28] *Id.* at 41.
[29] *Id.* at 34. Under 28 U.S.C. s. 158(d)(2)(A), the grounds for certification for direct review in a court of appeals are:
(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of Supreme Court of the United States, or involves a matter of public importance;
(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
(iii) an immediate appeal from the judgment, order, or decree may materially advance the progression of the case or proceeding in which the appeal is taken.

III. Effect of Proposed Changes:

Section 1 amends paragraph (2)(c) of s. 222.21, F.S., to clarify that any interest in any IRA or individual retirement annuity received in a transfer incident to divorce as described in s. 408(d)(6) of the Internal Revenue Code of 1986 (IRC), as amended, continues to be exempt from creditor claims after the transfer, regardless of the date the transfer was made.

To the extent s. 222.21(2)(a), F.S., exempts a transferee's interest in an IRA or individual retirement annuity upon a transfer incident to divorce pursuant to s. 408(d)(6) of the IRC, the bill clarifies current law, which exempts such interests from the claims of the transferee's creditors.

Existing law provides that s. 222.21(2)(c), F.S., is intended to clarify existing law, is remedial in nature, and shall have retroactive application. As a result, the provision of the bill will apply retroactively as well.

Section 2 provides that the act shall take effect upon becoming a law.

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:

Retroactive Application

Once a bill becomes law, it is presumed to apply only prospectively. The presumption against retroactive application may be rebutted by clear evidence of legislative intent.[30] To determine if the terms of a statute and the purpose of the enactment indicate retroactive application, a court may consider the language, structure, purpose, and legislative history of the enactment.[31]

[30] *Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc*., 67 So. 3d 187 (Fla. 2011).
[31] *Id*.

If the legislation clearly expresses an intent that the law apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.[32] Even when the Legislature has clearly expressed its intention that the statute be given a retroactive application, courts must refuse to do so if it impairs vested rights, creates new obligations, imposes new penalties,[33] or impairs an obligation of contract.[34] For example, ex post facto legislation, i.e., a law that expands criminal liability retroactively by either creating a new crime for past conduct or by increasing the penalty for past conduct, is forbidden by both the Florida Constitution and the United States Constitution. Statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.[35]

V. 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.

VI. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[32] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[33] *Id.*
[34] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010).
[35] *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999).

C. Government Sector Impact:

None.

VII. Technical Deficiencies:

None.

VIII. Related Issues:

None.

IX. Statutes Affected:

This bill substantially amends section 222.21, Florida Statutes.

X. 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 Polsky

29-00017-22 2022968__

A bill to be entitled

An act relating to individual retirement accounts; amending s. 222.21, F.S.; specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. An interest in any fund or account awarded or received in a transfer incident to divorce described in s. 408(d)(6) of the Internal Revenue Code of 1986, as amended, is exempt upon the interest being awarded or received and continues to be exempt

29-00017-22 2022968__

thereafter. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts and to each transfer incident to divorce without regard to the date an account was created or the transfer was made.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture
Appropriations Subcommittee on Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY
29th District

January 12, 2022

Chairman Danny Burgess
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Burgess,

I respectfully request that you place SB 968, relating to Individual Retirement Accounts, on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 29

cc: Tom Cibula, Staff Director
Celia Georgiades, Administrative Assistant

REPLY TO:
☐ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1032
INTRODUCER:	Judiciary Committee and Senator Burgess
SUBJECT:	Guardianships
DATE:	January 25, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 creates the Florida Guardianship Jurisdiction Act and revises three statutes governing orders not to resuscitate.

The Florida Guardianship Jurisdiction Act is crafted to provide direction to courts, attorneys, guardians, and individuals when an adult guardianship proceeding involves this state and at least one other state.

The act is based on the model Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act developed by the Uniform Law Commission. The Uniform act, or a slight variation of the act, has been adopted in 46 states.

The focus of this act, like the model act, is limited to resolving guardianship issues that occur when multiple state jurisdictions are involved, when complexities arise because a guardianship is transferred from one state to another, and when guardianships or orders in one state are sought to be recognized in another state. Accordingly, the bill establishes criteria for courts to use in determining which state's courts are the most appropriate forum to assert jurisdiction over and resolve a guardianship issue.

The bill also revises three existing statutes governing orders not to resuscitate. In general terms, the revisions permit a guardian to sign an order not to resuscitate, without additional court approval, when a preexisting order was approved by a court in an initial or annual guardianship

plan and the order has not been suspended by a court. Additionally, a guardian is authorized to consent to an order not to resuscitate being placed in a ward's chart by a physician if the hospital ethics committee has met and agrees with the entry and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek additional court approval. Within 72 hours after the signing the order or consenting to the order, the guardian must file notice of the action with the court and provide accompanying documentation that supports the decision or a copy of the court's order after the preliminary hearing.

II. Present Situation:

Guardianship

A guardianship is a legal concept in which a "guardian" is given the legal duty and authority to care for a "ward" or his or her property because the ward is considered incapable of acting for himself or herself.[1] The ward's incapacity is most often due to infancy, disability, or incapacity. Guardianships are generally involuntary procedures and disfavored by courts because the ward loses his or her individual and civil rights. However, guardianships are necessary to protect the most vulnerable people who do not have the ability to function and protect themselves.

Mobile Adults and Multiple Jurisdictions

As adults live longer, own property in multiple states, and have family members who reside in a variety of states, determining which state is the most appropriate forum for guardianship proceedings for an aging and infirm adult, often a parent, can be complicated. These factors for determining jurisdiction present complex issues for courts, attorneys, and guardians as they seek to unravel which state should have jurisdiction, how a guardianship may be transferred to another state, and to what extent one court must recognize a guardianship established in a different state.[2] As litigation continues among family members, emotions are strained, and considerable financial assets are expended, often reducing or depleting a ward's estate.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

In an effort to resolve these issues that were consuming a substantial amount of legal resources, the Uniform Law Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in 2007.

The act has a narrow scope and deals solely with interstate jurisdiction and connected issues for adult guardianships. It has been adopted in 46 states, with Florida, Texas, Kansas, and Michigan being the exceptions to adoption.[3]

---

[1] BLACK'S LAW DICTIONARY, 11th edition, 2019.
[2] American Bar Association, Commission on Law and Aging, *State Adult Guardianship Legislation: Directions of Reform – 2013*, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_final_guardianship_legislative_update_12-18-13.pdf.
[3] Uniform Law Commission, *Adult Guardianship and Protective Proceedings Jurisdiction Act*, https://www.uniformlaws.org/committees/community-home?CommunityKey=0f25ccb8-43ce-4df5-a856-e6585698197a (last visited Jan. 17, 2022).

Many of the provisions to the UAGPPJA are similar to those in the Uniform Child Custody Jurisdiction and Enforcement Act which were codified in Part II of chapter 61, F.S., in 2002. Moreover, the purposes of the UAGPPA and the UCCJEA are similar. The purposes of the UCCJEA include avoiding jurisdictional competition and conflict with courts of other states regarding child custody matters and ensuring that that child custody cases are decided in the most appropriate state.[4]

Orders Not to Resuscitate

Resuscitation may be withheld or withdrawn from a patient by certain enumerated medical personnel when evidence of an order not to resuscitate is presented.

For an order not to resuscitate to be valid, it must:

- Be on the form adopted by the Department of Health, and
- Be signed by the patient's physician or physician's assistant and by the patient, or if the patient is incapacitated, by the patient's healthcare surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.[5]

Initial Guardianship Plan

Under the provisions of guardianship law, an initial guardianship plan must include a list of any preexisting orders not to resuscitate or preexisting advance directives, the date the order or directive was signed, whether it has been suspended by the court, and a description of the steps taken to identify and locate the order or directive. An initial guardianship plan continues in effect until it is amended or replaced by the approval of an annual guardianship plan, until the ward's capacity is restored or the ward dies, or a minor ward reaches the age of 18 years.[6]

Annual Guardianship Plan

Each guardian of the person is required to file an annual guardianship plan with the court which updates information about a ward's condition. The annual guardianship plan for an adult ward, like the initial guardianship plan, must also contain a list of any preexisting orders not to resuscitate or preexisting advance directives, the date the order or directive was signed, whether the order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order or directive.[7]

Powers of a Guardian Upon Court Approval

A plenary guardian or a limited guardian, after receiving court approval pursuant to a petition for authorization to act, may sign an order not to resuscitate. When the guardian seeks court approval to sign the order, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed and:

- Rule on the relief requested *immediately* after the preliminary hearing; or
- Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested *immediately* after the evidentiary hearing.[8]

[4] Section 61.502, F.S.
[5] Section 401.45, F.S.
[6] Section 744.363, F.S.
[7] Section 744.3675, F.S.
[8] Section 744.441, F.S.

III. Effect of Proposed Changes:

The Florida Guardianship Jurisdiction Act

Chapter 744, F.S., the guardianship chapter, is currently divided into eight parts. This bill creates a new part in ch. 744, F.S., a part which creates 24 statutes.

Section 5 creates the new "Part IX" of chapter 744, F.S., titled the "Florida Guardianship Jurisdiction Act."

Section 6 provides the short title of the act which is the "Florida Guardianship Jurisdiction Act."(s. 744.74, F.S.)

Section 7 establishes the purpose and construction of the part. The section explains that the purpose of the "part is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings." This act clarifies that it is intended to supplement, but not replace, the current method for determining incapacity, appointing guardians, managing estates, and other procedures as governed by the chapter. The general purposes of this part are to:

- Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.
- Establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves.
- Avoid relitigating the guardianship decisions of other states in this state.
- Discourage the use of the interstate system for continuing controversies over guardianship.
- Provide a uniform national system for registration and enforcement of out-of-state guardianship orders. (s. 744.75, F.S.)

Section 8 defines 14 terms used in the act: adult, emergency, guardian, guardianship order, guardianship proceeding, home state, incapacitated person, interested person, party, person, respondent, significant-connection state, state, and ward. (s. 744.76, F.S.)

Key among these terms are the definitions of "home state" and "significant-connection state." When a court seeks to determine which state's courts provide the most appropriate forum, these two terms are decisive:

- "Home state" The home state is the state where the individual was physically present for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. This 6-month period also includes any time of temporary absence. If no home state exists, then his or her home state is the state where he or she was physically present, including any period of temporary absence, for at least 6 consecutive months, ending within the 6 months immediately before the filing of the petition. This definition also means that the home state's jurisdiction to appoint a guardian or issue a protective order for someone continues for a period of up to 6 months after the person relocates to another state.[9]

[9] National Conference of Commissioners on Uniform State Laws, *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007),* 2 – 3

- A "significant-connection state" is a slightly broader concept than the home state. It means a state, other than the home state, where the respondent has a significant connection other than mere physical presence, and where substantial evidence concerning the respondent is available.[10]

According to the notes drafted by the National Conference of Commissioner on Uniform State Laws, a respondent in a guardianship proceeding will have only one single home state, but may have several states that are determined to be significant-connection states.[11]

Section 9 addresses how guardianship orders issued in other countries are applicable to this act. The act requires a state court to treat a foreign country as though it were a state of the United States for purposes of applying the part. (s. 774.77, F.S.) This provision is similar to how this state's courts are directed to treat child custody determinations made in a foreign country under s. 61.506, F.S., part of this state's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Section 10 addresses communication between courts but does not specify a particular method that must be used. A court in this state is authorized to communicate with a court in another state when proceedings arise under this part. If the court so chooses to communicate with another court, it must make a record of the communication. When communications are conducted between the courts of different states, an interested person must be able to participate, either in person, or by some remote means, and the interested person does not need to be a party to the internal communications between the court clerks. (s. 744.78, F.S.) These procedures for communications between courts are nearly identical to those authorized under s. 61.511, F.S., part of this state's UCCJEA.

Section 11 recognizes that cooperation among the various courts is essential for this act to succeed across multiple states. This section provides that a Florida court, in a guardianship proceeding conducted in this state, may request the appropriate court of another state to do the following:

- Hold a hearing.
- Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state.
- Order that an evaluation or assessment be made of the respondent.
- Order any appropriate investigation of a person involved in a proceeding.
- Forward to a court of this state a certified copy of the transcript or other records of a hearing or any other proceeding, any evidence otherwise produced under the procedures of that state, and any evaluation or assessment prepared in compliance with an order requiring an evaluation or assessment or investigation involving a person in the proceeding.
- Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.

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https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=669b547e-a76e-6532-a13c-f97fd4f32d7f.

[10] *Id.*, at 3.

[11] *Id.*

- Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103.

If a court of another state in which a guardianship proceeding is pending requests the kind of assistance described above, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. The language in the bill does not describe how costs and expenses are to be assessed, but leaves the issue to be determined by local law.[12] (s. 744.79, F.S.) The procedures authorized by this section are similar to those in s. 61.513, F.S., part of this state's UCCJEA.

Section 12 provides for the taking of testimony in another state. If all the parties agree, a court in this state may permit a witness in another state to be deposed or testify by phone, audiovisual, or other electronic means.

When documentary evidence is transmitted from another state to a court of this state by technological means and it does not produce an original writing, it may be excluded from evidence after a court determines its admissibility. (s. 744.80, F.S.) The procedures authorized by this section are similar to those in s. 61.512, F.S., part of this state's UCCJEA.

Section 13 specifies the elements that a court must consider when determining "significant-connection factors." When a court is determining whether a respondent has a significant connection with a particular state, the court must consider the following:

- The location of the respondent's family and other persons required to be notified of the guardianship proceeding.
- The length of time that the respondent was physically present in the state at any point in time and the duration of any absence.
- The location of the respondent's property.
- The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationships, and receipt of services. (s. 744.81, F.S.)

Section 14 states that this Part IX provides the exclusive jurisdictional basis for a court of this state to appoint a guardian for an adult. (s. 744.82, F.S.) Accordingly, this state would have jurisdiction if this state is the home state for an alleged incapacitated person and may have jurisdiction if it is a significant-connection state.

Moreover, the bill would be a limit on the venue provision in existing s. 744.1097(1), F.S., which states that the venue for proceedings for determination of incapacity could be in the county where the alleged incapacitate person is "found."

Section 15 addresses the issue of jurisdiction. The National Conference of Commissioners of Uniform State Laws explains that the primary objective of this provision is to eliminate the possibility of dual appointments or orders. The act creates a three-level priority scheme for deciding which state has jurisdiction to appoint a guardian. The first priority is the home state,

[12] *Id*., at 12.

followed by a state where the respondent has significant connections, and then other jurisdictions.[13]

This section provides that a court of this state has jurisdiction to determine incapacity, appoint a guardian, or undertake similar proceedings if *any* of the following applies:

- This state is the respondent's home state.
- On the date a petition is filed, this state is a significant-connection state and:
  - The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
  - The respondent has a home state but a petition for an appointment or order is not pending in a court of that state or another significant-connection state, *and* before the court of this state makes the appointment or issues an order:
    - A petition to determine incapacity, appoint a guardian, or other similar proceeding is not filed in the respondent's home state;
    - An objection to the jurisdiction of the court of this state is not filed by a person required to be notified of the proceeding; and
    - The court of this state concludes that it is the appropriate forum after considering the factors set forth in s. 744.86, F.S.
- This state does not have jurisdiction under the above criteria, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the State Constitution and the United States Constitution.
- The requirements for special jurisdiction under s. 744.84 are met. (s. 744.83, F.S.)

Section 16 lists the special circumstances in which a court that does not have jurisdiction under s. 744.83, F.S., is granted special jurisdiction, which is jurisdiction for limited purposes. A court of this state has jurisdiction to do the following:

- In accordance with the guardianship chapter, appoint an emergency temporary guardian for a person who is physically present in this state.
- Appoint a guardian for an incapacitated person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of an emergency temporary guardian is brought in this state but this state was not the respondent's home state on the date that the petition was filed, the court must dismiss the proceeding at the request of the court of the home state, if any such request is made, only after a hearing and judicial determination of the appropriate forum of the alleged incapacitated person based on those factors as set forth in s. 744.86, F.S., whether by the home state or this state. If, after the hearing, the home state and this state differ in their determination of which state is the appropriate forum, the home state's determination will prevail, whether dismissal is requested before or after the emergency appointment. (s. 744.84, F.S.)

Section 17 establishes exclusive and continuing jurisdiction. Except as otherwise provided in s. 744.84, F.S., a court that appoints a guardian consistent with this part has exclusive and continuing jurisdiction over the proceeding, but only until:

- A determination is made as to the proper jurisdiction of the action;

[13] *Id.*, at 18.

- The jurisdiction is terminated by the court; or
- The appointment or order expires by its own terms. (s. 744.85, F.S.)

Section 18 provides the criteria for determining the appropriate forum for a guardianship. A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum. If a court of this state declines to exercise its jurisdiction it must dismiss or stay the proceeding. The court may impose any condition that it considers just and proper, including requiring that a petition for the appointment of a guardian or issuance of a similar petition be filed promptly in another state.

In determining whether it is an appropriate forum, the court must consider all relevant factors, which include:

- Any expressed preference of the respondent.
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation.
- The length of time the respondent was physically present in or was a legal resident of this or another state.
- The distance of the respondent from the court in each state.
- The financial circumstances of the respondent's estate.
- The nature and location of the evidence.
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- The familiarity of the court of each state with the facts and issues in the proceeding.
- If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator. (s. 744.86, F.S.)

The provisions of this section are similar to those of s. 61.520, F.S., of this state's UCCJEA. Courts of this state may decline to exercise jurisdiction over a child custody matter if, based on a number of factors, the court of another state is a more appropriate forum.

Section 19 explains when jurisdiction may be declined due to someone's conduct. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may:

- Decline to exercise jurisdiction; or
- Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or protecting the respondent's property, or both, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction.

If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful conduct, the court may assess that person necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against this state or a governmental

subdivision, agency, or instrumentality of this state unless authorized by law other than this part. (s. 744.87, F.S.)

The provisions of this section have similarities to s. 61.521, F.S., of this state's UCCJEA.

Section 20 describes the required notice for guardianship proceedings. If a petition for the appointment of a guardian is brought in this state but this state is not the respondent's home state on the date that the petition is filed, the petitioner must provide notice of the petition to those persons who would be entitled to notice of the petition both in this state and in the respondent's home state. (s. 744.88, F.S.)

Section 21 explains what must happen when guardianship proceedings are filed in more than one state. Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- If the court of this state has jurisdiction under this chapter, it may proceed with the case unless a court of another state acquires jurisdiction *before* the appointment of the guardian or the issuance of the order.
- If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination, whether at the time the petition is filed or at any time before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum. (s. 744.89, F.S.)

The procedures of this section are similar to the procedures in s. 61.519, F.S., of this state's UCCJEA, addressing simultaneous child custody proceedings in more than one state.

Section 22 explains how a guardianship must be *transferred* to another state. A guardian appointed in this state may petition the court to transfer the guardianship to another state. However, notice of a petition must be given to all parties who would be entitled to notice of a petition in this state for the appointment of a guardian or a petition for a change of residence of the ward.

On the court's own motion or upon the request of the guardian, the incapacitated person, or both, the court must hold a hearing on a petition filed as described above. The court may issue an order provisionally granting a petition to transfer a guardianship and must direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will likely be accepted by the court of the other state *and* the court finds that:

- The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the best interests of the incapacitated person; and
- Plans for the care and services for the incapacitated person in the other state are reasonable and sufficient.

The court must issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

- A provisional order accepting the proceeding from the court to which the proceeding is to be transferred and issued under provisions similar to s. 744.89, F.S.; and
- The documents required, including any required accountings, to terminate a guardianship in this state.

The guardian of the ward in this state must file a petition for discharge in accordance with part VII of ch. 744 within 60 days after receipt of an order confirming the transfer of the guardianship to another jurisdiction. (s. 744.90, F.S.)

Section 23 provides how a guardianship is *accepted* in this state when it is transferred from another state. Within 60 days after the residence of a ward of a foreign guardian is moved to this state, the foreign guardian appointed in another state must file a petition to determine incapacity and a petition to appoint a guardian with the clerk of court in the county in which the ward resides. The petitions must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

Notice of the petitions must be given to those persons who would be entitled to notice in this state in the same manner that notice is required to be given in this state and in the respondent's home state. The court must hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

The court must issue orders provisionally granting the petitions unless:

- An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or
- The guardian is ineligible for appointment in this state.

Until a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. However, a foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

After appointment of a guardian in this state, the court may issue the orders necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

The authority of the guardian of a nonresident ward shall be recognized and given full faith and credit in the courts of this state. A guardian appointed in another state or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state. (s. 744.92, F.S.)

Section 24 governs the registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardianship is not pending in this state, the guardian appointed in the other state, after giving notice of the appointment to the appointing

court of the intent to register, may register the guardianship order in this state by filing it as a foreign judgment in a court of this state pursuant to ss. 744.307 and 744.308. (s. 744.92, F.S.)

Section 25 speaks to the effect of registering a guardianship order from another state. Upon the registration of a guardianship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment, except as prohibited under the laws of this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties. (s. 744.93, F.S.)

Section 26 addresses the need for uniformity of application and construction. When this part is applied and construed, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (s. 744.94, F.S.)

Section 27 explains the relationship of this act to the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). E-SIGN contains a unique provision allowing reverse-preemption by state laws based on the Uniform Electronic Transactions Act (UETA). Florida adopted UETA in 2000. Since 2000, all uniform acts that could potentially involve electronic transactions contain this language. By enacting this section, any electronic signatures or transactions related to the new act will be governed by Florida law, s. 668.50, F.S., rather than by federal law.

Section 28 addresses the application date of this part. This newly created part in ch. 744, F.S., applies to guardianship and similar proceedings filed on or after July 1, 2022.

Orders Not to Resuscitate (Sections 2-4)

Section 2 involves the initial guardianship plan. Section 744.363(1)(f), F.S., is amended to provide that, if a preexisting order not to resuscitate is disclosed in an initial guardianship plan approved by a court, and the order has not been suspended by the court, a plenary guardian or a limited guardian may sign an order not to resuscitate without additional court approval. This provision should avoid emergency situations and allow a ward's wishes to be honored from the beginning of a guardianship appointment.

Section 3 addresses the Annual Guardianship Plan. In a similar way, s. 744.3675, F.S., is amended to provide that, if a preexisting order not to resuscitate is disclosed in an annual guardianship plan approved by a court, and the order has not been suspended by the court, a plenary guardian or a limited guardian may sign an order not to resuscitate without additional court approval. This language is also intended to avoid emergency situation and allow the ward's wishes to be honored.

Section 4 speaks to the Powers of a Guardian Upon Court Approval. Section 744.441(2), F.S., is amended to authorize a guardian to consent to an order not to resuscitate being placed in a ward's chart by a physician if the hospital ethics committee has met and agrees with the entry and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek court approval. Within 72 hours after signing the order or consenting to the order, the guardian must file notice of the action with the court and provide accompanying

documentation that supports the decision or a copy of the court's order after the preliminary hearing.

Section 1 is a technical conforming change. The deletions made to s. 744.306, F.S., dealing with foreign guardians, are necessary to conform to changes made in the Florida Guardianship Jurisdiction Act.

The bill takes effect July 1, 2022.

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:

By enacting provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and its criteria for determining the most appropriate state to exercise jurisdiction over a guardianship matter, there may be a disincentive for persons to commence guardianship proceedings in an inappropriate forum. This in turn may reduce litigation costs that often reduce the assets of a ward or alleged incapacitated person which would otherwise be available for his or her care and needs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For clarity, the Legislature may wish consolidate the provisions of the bill related or orders not to resuscitate into a single section of statute.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 744.74, 744.96, 744.75, 744.76, 744.77, 744.78, 744.79, 744.80, 744.81, 744.82, 744.83, 744.84, 744.85, 744.86, 744.87, 744.88, 744.89, 744.90, 744.91, 744.92, 744.93, 744.94, and 744.95.

The bill amends the following sections of the Florida Statutes: 744.306, 744.363, 744.3675, and 744.441.

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 January 24, 2022:
The committee substitute differs from the underlying bill by adding four new sections at the beginning of the bill.

- Section 1 is a deletion that is a technical conforming change needed to conform exiting law to the new Florida Guardianship Jurisdiction Act.
- Section 2 permits a guardian to sign an order not to resuscitate a ward without additional court approval if the preexisting order not to resuscitate was included in the initial guardianship plan and has not been suspended by the court.
- Section 3 similarly permits a guardian to sign an order not to resuscitate a ward without prior court approval if the preexisting order not to resuscitate was disclosed in a court approved annual guardianship plan and has not been suspended by the court.
- Section 4 authorizes a guardian to consent to an order not to resuscitate being placed in a ward's chart by a physician, if the hospital ethics committee agrees with the entry, and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek court approval. Within 72 hours after signing the order or consenting to the order being placed in the ward's chart, the guardian must file notice of the action with the court and provide accompanying documentation.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2022	.	
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The Committee on Judiciary (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 744.306, Florida Statutes, is amended to read:

744.306 Authority of guardian to accept payment of debt owed to ward ~~Foreign guardians~~.—

~~(1) When the residence of a ward of a foreign guardian is moved to this state, the guardian shall, within 60 days after such change of residence, file the authenticated order of her or~~

~~his appointment with the clerk of the court in the county where the ward resides. Such order shall be recognized and given full faith and credit in the courts of this state. The guardian and the ward are subject to this chapter.~~

~~(2) A guardian appointed in any state, territory, or country may maintain or defend any action in this state as a representative of her or his ward.~~

(1)~~(3)~~ A debtor ~~Debtors~~ who has not ~~have~~ received a ~~no~~ written demand for payment from a guardian appointed in this state within 60 days after the appointment of a guardian, curator, conservator, or committee in any state, territory, or country other than this state, and whose property in this state is subject to a mortgage or other lien securing the debt held by the foreign guardian, curator, conservator, or committee, may pay the debt to the foreign guardian, curator, conservator, or committee after the expiration of 60 days from the date of her or his appointment. A satisfaction of the mortgage or lien, executed after the 60 days have expired by the foreign guardian, curator, conservator, or committee, with an authenticated copy of the letters or other evidence of authority of the foreign guardian, curator, conservator, or committee attached, may be recorded in the public records of this state and shall constitute an effective discharge of the mortgage or lien, irrespective of whether the debtor had received written demand before paying the debt.

(2)~~(4)~~ A person ~~All persons~~ indebted to a ward, or having possession of personal property belonging to a ward, who has not ~~have~~ received a ~~no~~ written demand for payment of the indebtedness or the delivery of the property from a guardian

appointed in this state is ~~are~~ authorized to pay the indebtedness or to deliver the personal property to the foreign guardian, curator, conservator, or committee after the expiration of the 60 days from the date of her or his appointment.

Section 2. Paragraph (f) of subsection (1) of section 744.363, Florida Statutes, is amended to read:

744.363 Initial guardianship plan.—

(1) The initial guardianship plan shall include all of the following:

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. If a preexisting order not to resuscitate is disclosed in a court approved initial guardianship plan and has not been suspended by the court, a plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3) without prior court approval under s. 744.441(2).

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

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

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

(d) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. If a preexisting order not to resuscitate is disclosed in a court approved annual guardianship plan and has not been suspended by the court, a plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3) without prior court approval under s. 744.441(2).

Section 4. Subsection (2) of section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act:

(2) A plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3). When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed, and:

(a) Rule on the relief requested immediately after the preliminary hearing; or

(b) Conduct an evidentiary hearing not later than 4 days

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after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

(c) Notwithstanding paragraph (a), if the ward is in a hospital and exigent circumstances exist which do not allow time for the guardian to seek court approval under paragraph (a), without prior court approval, the guardian may consent to an order not to resuscitate being entered in the ward's chart by a physician provided the hospital ethics committee has met and agrees with the entry of an order not to resuscitate.

(d) As soon as reasonable, and not more than 72 hours after signing an order not to resuscitate or consenting to an order being entered in the ward's chart, the guardian must file notice of such action with the court attaching documentation supporting the decision or a copy of the court's order issued pursuant to paragraph (a).

Section 5. Part IX of chapter 744, Florida Statutes, consisting of ss. 744.74-744.96, Florida Statutes, is created and entitled the "Florida Guardianship Jurisdiction Act."

Section 6. Section 744.74, Florida Statutes, is created to read:

744.74 Short title.—Sections 744.74-744.396 may be cited as the "Florida Guardianship Jurisdiction Act."

Section 7. Section 744.75, Florida Statutes, is created to read:

744.75 Purpose; construction.—The purpose of this part is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. This part is intended to supplement, but not replace, other parts of this chapter which provide procedures

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for determining incapacity, appointing guardians, managing estates, and other procedures as governed by this chapter. The general purposes of this part are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.

(2) Establish procedures for transferring guardianship from one state to another state when an adult ward.

(3) Avoid relitigating the guardianship decisions of other states in this state.

(4) Discourage the use of the interstate system for continuing controversies over guardianship.

(5) Provide a uniform national system for registration and enforcement of out-of-state orders appointing a guardian.

Section 8. Section 744.76, Florida Statutes, is created to read:

744.76 Definitions.—As used in this part, the term:

(1) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. If no such state exists, then the home state is the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months immediately before the filing of the petition.

(2) "Respondent" means an adult who is an alleged incapacitated person or ward.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant

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connection other than mere physical presence, and in which substantial evidence concerning the respondent is available.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 9. Section 744.77, Florida Statutes, is created to read:

744.77 International application of part.—A court of this state may treat a foreign country as if it were a state of the United States for purposes of applying this part.

Section 10. Section 744.78, Florida Statutes, is created to read:

744.78 Communication between courts.—

(1) A court of this state may communicate with a court of another state concerning a proceeding arising under this chapter; however, the court of this state shall make a record of the communication.

(2) Communications between courts may not occur without the ability of interested persons to also participate in the communication, either in person or by other means of participation. Interested persons need not be a party to the internal communications between the clerks of the various courts.

Section 11. Section 744.79, Florida Statutes, is created to read:

744.79 Cooperation between courts.—

(1) In a guardianship proceeding in this state, a court of

this state may request the appropriate court of another state to do any of the following:

(a) Hold a hearing.

(b) Order a person in that state to produce evidence or given testimony pursuant to procedures of that state.

(c) Order that an evaluation or assessment be made of the respondent.

(d) Order any appropriate investigation of a person involved in a proceeding.

(e) Forward to the court of this state a certified copy of the transcript or other records of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or paragraph (d).

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent.

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103.

(2) If a court of another state in which a guardianship proceeding is pending requests the kind of assistance described in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Section 12. Section 744.80, Florida Statutes, is created to read:

744.80 Taking testimony in another state.—

(1) In a guardianship proceeding, upon agreement of all the parties, a court of this state may permit a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means.

(2) Documentary evidence transmitted from another state to a court of this state by technological means which does not produce an original writing may be excluded from evidence after a judicial determination of admissibility.

Section 13. Section 744.81, Florida Statutes, is created to read:

744.81 Significant-connection factors.—In determining whether a respondent has a significant connection with a particular state, the court shall consider the following:

(1) The location of the respondent's family and other persons required to be notified of the guardianship proceeding.

(2) The length of time that the respondent was physically present in the state at any point in time and the duration of any absence.

(3) The location of the respondent's property.

(4) The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationships, and receipt of services.

Section 14. Section 744.82, Florida Statutes, is created to read:

744.82 Exclusive basis for jurisdiction.—This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian for an adult. If the courts of this state have jurisdiction, the appropriate venue shall be determined as

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provided in s. 744.1097.

Section 15. Section 744.83, Florida Statutes, is created to read:

744.83 Jurisdiction.—A court of this state has jurisdiction to determine incapacity, appoint a guardian, or undertake similar proceedings if any of the following applies:

(1) This state is the respondent's home state.

(2) On the date a petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state but a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court of this state makes the appointment or issues an order:

1. A petition to determine incapacity, appoint a guardian, or other similar proceeding is not filed in the respondent's home state;

2. An objection to the jurisdiction of the court of this state is not filed by a person required to be notified of the proceeding; and

3. The court of this state concludes that it is the appropriate forum after considering the factors set forth in s. 744.86.

(3) This state does not have jurisdiction under subsection (1) or subsection (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum,

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and jurisdiction in this state is consistent with the State Constitution and the United States Constitution.

(4) The requirements for special jurisdiction under s. 744.84 are met.

Section 16. Section 744.84, Florida Statutes, is created to read:

744.84 Special jurisdiction.—

(1) A court of this state has jurisdiction to do the following:

(a) In accordance with this chapter, appoint an emergency temporary guardian pursuant to s. 744.3031 for a person who is physically present in this state.

(b) Appoint a guardian for a ward for whom a provisional order to transfer the proceeding from another state has been issued.

(2) If a petition for the appointment of an emergency temporary guardian is brought in this state and this state is not the respondent's home state on the date that the petition is filed, the court must dismiss the proceeding at the request of the court of the home state, if any such request is made, only after a hearing and judicial determination of the appropriate forum of the alleged incapacitated person based on those factors as set forth in s. 744.86, whether by the home state or this state. If, after the hearing, the home state and this state differ in their determination of which is the appropriate forum, the determination of the home state shall prevail, whether dismissal is requested before or after the emergency appointment.

Section 17. Section 744.85, Florida Statutes, is created to

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read:

744.85 Exclusive and continuing jurisdiction.—Except as otherwise provided in s. 744.84, a court that has appointed a guardian consistent with this part has exclusive and continuing jurisdiction over the proceeding only until a determination is made as to the proper jurisdiction of the action, the jurisdiction is terminated by the court, or the appointment or order expires by its own terms.

Section 18. Section 744.86, Florida Statutes, is created to read:

744.86 Appropriate forum.—

(1) A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it must dismiss or stay the proceeding. The court may impose any condition that the court considers just and proper, including requiring that a petition for the appointment of a guardian or issuance of similar petition be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent.

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation.

(c) The length of time the respondent was physically

present in or was a legal resident of this or another state.

(d) The distance of the respondent from the court in each state.

(e) The financial circumstances of the respondent's estate.

(f) The nature and location of the evidence.

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(h) The familiarity of the court of each state with the facts and issues in the proceeding.

(i) If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator.

Section 19. Section 744.87, Florida Statutes, is created to read:

744.87 Jurisdiction declined by reason of conduct.—

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful conduct, the court may:

(a) Decline to exercise jurisdiction; or

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or protecting the respondent's property, or both, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful

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conduct, it may assess that person necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless otherwise expressly authorized by law.

Section 20. Section 744.88, Florida Statutes, is created to read:

744.88 Notice of proceeding.—If a petition for the appointment of a guardian is brought in this state and this state is not the respondent's home state on the date that the petition was filed, the petitioner must provide notice of the petition to those persons who would be entitled to notice of the petition in this state and in the respondent's home state.

Section 21. Section 744.89, Florida Statutes, is created to read:

744.89 Proceedings in more than one state.—Except for a petition for the appointment of an emergency temporary guardian, if a petition for the appointment of a guardian is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court of this state has jurisdiction under this chapter, it may proceed with the case unless a court of another state acquires jurisdiction before the appointment of the guardian or issuance of the order.

(2) If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination of same, whether at the time the petition is filed or at any time

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before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination of same, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum.

Section 22. Section 744.90, Florida Statutes, is created to read:

744.90 Transfer of guardianship to another state.—

(1) A guardian appointed in this state may petition the court to transfer the guardianship to another state as provided in s. 744.1098(1).

(2) Notice of a petition under subsection (1) must be given to the ward and all of the next of kin of the ward.

(3) On the court's own motion or upon request of the guardian, the ward, or both, the court shall hold a hearing on a petition filed under subsection (1).

(4) The court may issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will likely be accepted by the court of the other state and the court finds that:

(a) The ward is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the best interests of the ward ; and

(c) Plans for care and services for the ward in the other state are reasonable and sufficient.

(5) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred and issued under provisions similar to s. 744.89; and

(b) The documents required, including any required accountings, to terminate a guardianship in this state.

(6) The guardian of the ward in this state shall file a petition for discharge in accordance with part VII of this chapter within 60 days after receipt of an order confirming the transfer of the guardianship to another jurisdiction.

Section 23. Section 744.91, Florida Statutes, is created to read:

744.91 Accepting guardianship transferred from another state.—

(1) Within 60 days after the residence of a ward of a foreign guardian is moved to this state, the foreign guardian appointed in another state shall file a petition to determine incapacity and a petition to appoint a guardian with the clerk of court in the county in which the ward resides. The petitions must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

(2) Notice of the petitions under subsection (1) must be given to those persons who would be entitled to notice in this state in the same manner as notice is required to be given in this state and the respondent's home state.

(3) The court shall hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

(4) The court shall issue orders provisionally granting the petitions unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or

(b) The guardian is ineligible for appointment in this state.

(5) Until such time as a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. A foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

(6) After appointment of a guardian in this state, the court may issue such orders as necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

(7) The authority of the guardian of a nonresident ward shall be recognized and given full faith and credit in the courts of this state. A guardian appointed in another state or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state.

Section 24. Section 744.92, Florida Statutes, is created to read:


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744.92 Registration of guardianship orders.—If a guardian has been appointed in another state and a petition for the appointment of a guardianship is not pending in this state, the guardian appointed in the other state, after giving notice of the appointment to the appointing court of the intent to register, may register the guardianship order in this state by filing it as a foreign judgment in a court of this state pursuant to ss. 744.307 and 744.308.

Section 25. Section 744.93, Florida Statutes, is created to read:

744.93 Effect of registration.—Upon registration of an order from another state appointing a guardian, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties.

Section 26. Section 744.94, Florida Statutes, is created to read:

744.94 Uniformity of application and construction.—In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 27. Section 744.95, Florida Statutes, is created to read:

744.95 Relation to federal Electronic Signatures in Global and National Commerce Act.—This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.

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7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 28. This act applies to new and existing guardianship proceedings on or after July 1, 2022.

Section 29. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to guardianships; amending s. 744.306, F.S.; deleting provisions relating to foreign guardianship orders; amending s. 744.363, F.S.; authorizing a guardian to sign an order not to resuscitate in certain limited circumstances; amending s. 744.3675, F.S.; authorizing a guardian to sign an order not to resuscitate in certain limited circumstances; amending s. 744.441, F.S.; authorizing a guardian to consent to the entry of an order not to resuscitate by a physician under certain limited circumstances; requiring a guardian to notify the court within a certain time after signing or consenting to the entry of an order not to resuscitate; creating part IX of ch. 744, Florida Statutes, entitled the "Florida Guardianship Jurisdiction Act"; creating s. 744.74, F.S.; providing a short title; creating s. 744.75, F.S.; providing legislative purpose and construction; creating s.

744.76, F.S.; defining terms; creating s. 744.77, F.S.; providing construction relating to international application; creating s. 744.78, F.S.; authorizing courts of this state to communicate with courts of another state relating to certain proceedings; requiring courts of this state to make a record of such communication; specifying communications that interested persons must be able to participate in; creating s. 744.79, F.S.; specifying actions that a court of this state may request from, and perform for, a court of another state in certain guardianship proceedings; creating s. 744.80, F.S.; authorizing courts of this state to permit witness testimony by certain means; providing that certain evidence may be excluded after a judicial determination of admissibility; creating s. 744.81, F.S.; specifying factors a court must consider in determining whether a respondent has a significant connection with a particular state; creating s. 744.82, F.S.; providing construction relating to the basis for jurisdiction; creating s. 744.83, F.S.; specifying circumstances when a court of this state has jurisdiction in certain guardianship proceedings; creating s. 744.84, F.S.; specifying the special jurisdiction of courts of this state; providing procedures relating to the appointment of an emergency temporary guardian under certain circumstances; creating s. 744.85, F.S.; providing that a court that has appointed a guardian has exclusive and continuing jurisdiction until

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certain conditions are met; creating s. 744.86, F.S.; authorizing a court of this state to decline to exercise its jurisdiction under certain circumstances; specifying requirements for such court; specifying factors a court must consider in determining whether it is an appropriate forum; creating s. 744.87, F.S.; authorizing a court to decline to exercise jurisdiction or to exercise jurisdiction for a limited purpose under certain circumstances; authorizing a court to assess certain expenses against certain persons; prohibiting the court from assessing certain fees, costs, or expenses against this state; creating s. 744.88, F.S.; providing notice requirements for certain petitions to appoint a guardian; creating s. 744.89, F.S.; providing procedures when certain proceedings are pending in more than one state; creating s. 744.90, F.S.; authorizing a guardian appointed in this state to petition to transfer the guardianship to another state; providing notice requirements; providing requirements and procedures for the court; specifying conditions before a court issues a final order confirming the transfer and terminating the guardianship; providing a requirement for the guardian in filing a petition for discharge; creating s. 744.91, F.S.; specifying requirements and procedures for the transfer of a guardianship from another state; providing construction; creating s. 744.92, F.S.; providing a procedure for registering guardianship orders in this state under certain

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circumstances; creating s. 744.93, F.S.; providing construction relating to the effect of registering a guardianship order; creating s. 744.94, F.S.; providing construction relating to uniformity of law; creating s. 744.95, F.S.; providing construction relating to the federal Electronic Signatures in Global and National Commerce Act; providing applicability; providing an effective date.

By Senator Burgess

20-00678-22 20221032__

A bill to be entitled

An act relating to guardianships; creating part IX of ch. 744, Florida Statutes, entitled the "Florida Guardianship Jurisdiction Act"; creating s. 744.74, F.S.; providing a short title; creating s. 744.75, F.S.; providing legislative purpose and construction; creating s. 744.76, F.S.; defining terms; creating s. 744.77, F.S.; providing construction relating to international application; creating s. 744.78, F.S.; authorizing courts of this state to communicate with courts of another state relating to certain proceedings; requiring courts of this state to make a record of such communication; specifying communications that interested persons must be able to participate in; creating s. 744.79, F.S.; specifying actions that a court of this state may request from, and perform for, a court of another state in certain guardianship proceedings; creating s. 744.80, F.S.; authorizing courts of this state to permit witness testimony by certain means; providing that certain evidence may be excluded after a judicial determination of admissibility; creating s. 744.81, F.S.; specifying factors a court must consider in determining whether a respondent has a significant connection with a particular state; creating s. 744.82, F.S.; providing construction relating to the basis for jurisdiction; creating s. 744.83, F.S.; specifying circumstances when a court of this state has jurisdiction in certain guardianship proceedings;

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creating s. 744.84, F.S.; specifying the special jurisdiction of courts of this state; providing procedures relating to the appointment of an emergency temporary guardian under certain circumstances; creating s. 744.85, F.S.; providing that a court that has appointed a guardian has exclusive and continuing jurisdiction until certain conditions are met; creating s. 744.86, F.S.; authorizing a court of this state to decline to exercise its jurisdiction under certain circumstances; specifying requirements for such court; specifying factors a court must consider in determining whether it is an appropriate forum; creating s. 744.87, F.S.; authorizing a court to decline to exercise jurisdiction or to exercise jurisdiction for a limited purpose under certain circumstances; authorizing a court to assess certain expenses against certain persons; prohibiting the court from assessing certain fees, costs, or expenses against this state; creating s. 744.88, F.S.; providing notice requirements for certain petitions to appoint a guardian; creating s. 744.89, F.S.; providing procedures when certain proceedings are pending in more than one state; creating s. 744.90, F.S.; authorizing a guardian appointed in this state to petition to transfer the guardianship to another state; providing notice requirements; providing requirements and procedures for the court; specifying conditions before a court issues a final order confirming the transfer and terminating the

guardianship; providing a requirement for the guardian in filing a petition for discharge; creating s. 744.91, F.S.; specifying requirements and procedures for the transfer of a guardianship from another state; providing construction; creating s. 744.92, F.S.; providing a procedure for registering guardianship orders in this state under certain circumstances; creating s. 744.93, F.S.; providing construction relating to the effect of registering a guardianship order; creating s. 744.94, F.S.; providing construction relating to uniformity of law; creating s. 744.95, F.S.; providing construction relating to the federal Electronic Signatures in Global and National Commerce Act; creating s. 744.96, F.S.; providing applicability; providing an effective date.

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

Section 1. Part IX of chapter 744, Florida Statutes, consisting of ss. 744.74-744.96, Florida Statutes, is created and entitled the "Florida Guardianship Jurisdiction Act."

Section 2. Section 744.74, Florida Statutes, is created to read:

744.74 Short title.—This act may be cited as the "Florida Guardianship Jurisdiction Act."

Section 3. Section 744.75, Florida Statutes, is created to read:

744.75 Purpose; construction.—The purpose of this part is to provide clear direction to the courts, attorneys, guardians,

and individuals about the proper jurisdiction for guardianship proceedings. This part is intended to supplement, but not replace, the current system for determining incapacity, appointing guardians, managing estates, and other procedures as governed by this chapter. The general purposes of this part are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.

(2) Establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves.

(3) Avoid relitigating the guardianship decisions of other states in this state.

(4) Discourage the use of the interstate system for continuing controversies over guardianship.

(5) Provide a uniform national system for registration and enforcement of out-of-state guardianship orders.

Section 4. Section 744.76, Florida Statutes, is created to read:

744.76 Definitions.—As used in this part, the term:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Emergency" means imminent danger that the physical or mental health or safety of the respondent will be seriously impaired or that the respondent's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

(3) "Guardian" has the same meaning as in s. 744.102 and includes a limited or plenary guardian or an emergency temporary guardian as set forth in this chapter.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. If no such state exists, then the home state is the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months immediately before the filing of the petition.

(7) "Incapacitated person" means a person who has been adjudicated by a court of competent jurisdiction to lack the capacity to manage at least some of his or her property or to meet at least some of his or her essential health and safety requirements, and for whom a guardian has been appointed.

(8) "Interested person" has the same meaning as in s. 731.201.

(9) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship, incapacity, or similar proceeding.

(10) "Person," except when used in the term incapacitated person, includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other

groups or combinations as defined in s. 1.01(3).

(11) "Respondent" means an adult for whom the appointment of a guardian is sought.

(12) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence, and in which substantial evidence concerning the respondent is available.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Ward" means a person for whom a guardian or conservator has been appointed.

Section 5. Section 744.77, Florida Statutes, is created to read:

744.77 International application of part.—A court of this state shall treat a foreign country as if it were a state of the United States for purposes of applying this part.

Section 6. Section 744.78, Florida Statutes, is created to read:

744.78 Communication between courts.—

(1) A court of this state may communicate with a court of another state concerning a proceeding arising under this part; however, the court of this state shall make a record of the communication.

(2) Communications between courts may not occur without the ability of interested persons to also participate in the communication, either in person or by other means of

participation. Interested persons need not be a party to the internal communications between the clerks of the various courts.

Section 7. Section 744.79, Florida Statutes, is created to read:

744.79 Cooperation between courts.—

(1) In a guardianship proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold a hearing.

(b) Order a person in that state to produce evidence or given testimony pursuant to procedures of that state.

(c) Order that an evaluation or assessment be made of the respondent.

(d) Order any appropriate investigation of a person involved in a proceeding.

(e) Forward to the court of this state a certified copy of the transcript or other records of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or paragraph (d).

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103.

(2) If a court of another state in which a guardianship proceeding is pending requests the kind of assistance described in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Section 8. Section 744.80, Florida Statutes, is created to read:

744.80 Taking testimony in another state.—

(1) In a guardianship proceeding, upon agreement of all the parties, a court of this state may permit a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means.

(2) Documentary evidence transmitted from another state to a court of this state by technological means that does not produce an original writing may be excluded from evidence after a judicial determination of admissibility.

Section 9. Section 744.81, Florida Statutes, is created to read:

744.81 Significant-connection factors.—In determining whether a respondent has a significant connection with a particular state, the court shall consider the following:

(1) The location of the respondent’s family and other persons required to be notified of the guardianship proceeding.

(2) The length of time that the respondent was physically present in the state at any point in time and the duration of any absence.

(3) The location of the respondent’s property.

(4) The extent to which the respondent has ties to the state, such as voting registration, state or local tax return

filing, vehicle registration, driver license, social relationships, and receipt of services.

Section 10. Section 744.82, Florida Statutes, is created to read:

744.82 Exclusive basis for jurisdiction.—This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian for an adult.

Section 11. Section 744.83, Florida Statutes, is created to read:

744.83 Jurisdiction.—A court of this state has jurisdiction to determine incapacity, appoint a guardian, or undertake similar proceedings if any of the following applies:

(1) This state is the respondent's home state.

(2) On the date a petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state but a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court of this state makes the appointment or issues an order:

1. A petition to determine incapacity, appoint a guardian, or other similar proceeding is not filed in the respondent's home state;

2. An objection to the jurisdiction of the court of this state is not filed by a person required to be notified of the proceeding; and

3. The court of this state concludes that it is the

appropriate forum after considering the factors set forth in s. 744.86.

(3) This state does not have jurisdiction under subsection (1) or subsection (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the State Constitution and the United States Constitution.

(4) The requirements for special jurisdiction under s. 744.84 are met.

Section 12. Section 744.84, Florida Statutes, is created to read:

744.84 Special jurisdiction.—

(1) A court of this state has jurisdiction to do the following:

(a) In accordance with this chapter, appoint a temporary guardian in an emergency for a person who is physically present in this state.

(b) Appoint a guardian for an incapacitated person for whom a provisional order to transfer the proceeding from another state has been issued.

(2) If a petition for the appointment of an emergency temporary guardian is brought in this state and this state was not the respondent's home state on the date that the petition was filed, the court must dismiss the proceeding at the request of the court of the home state, if any such request was made, only after a hearing and judicial determination of the appropriate forum of the alleged incapacitated person based on those factors as set forth in s. 744.86, whether by the home

state or this state. If, after the hearing, the home state and this state differ in their determination of which is the appropriate forum, the home state shall prevail, whether dismissal is requested before or after the emergency appointment.

Section 13. Section 744.85, Florida Statutes, is created to read:

744.85 Exclusive and continuing jurisdiction.—Except as otherwise provided in s. 744.84, a court that has appointed a guardian consistent with this part has exclusive and continuing jurisdiction over the proceeding only until a determination is made as to the proper jurisdiction of the action, the jurisdiction is terminated by the court, or the appointment or order expires by its own terms.

Section 14. Section 744.86, Florida Statutes, is created to read:

744.86 Appropriate forum.—

(1) A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it must dismiss or stay the proceeding. The court may impose any condition that the court considers just and proper, including requiring that a petition for the appointment of a guardian or issuance of similar petition be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent.

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation.

(c) The length of time the respondent was physically present in or was a legal resident of this or another state.

(d) The distance of the respondent from the court in each state.

(e) The financial circumstances of the respondent's estate.

(f) The nature and location of the evidence.

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(h) The familiarity of the court of each state with the facts and issues in the proceeding.

(i) If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator.

Section 15. Section 744.87, Florida Statutes, is created to read:

744.87 Jurisdiction declined by reason of conduct.—

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction; or

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or protecting the respondent's

property, or both, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful conduct, it may assess that person necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this part.

Section 16. Section 744.88, Florida Statutes, is created to read:

744.88 Notice of proceeding.—If a petition for the appointment of a guardian is brought in this state and this state was not the respondent's home state on the date that the petition was filed, the petitioner must provide notice of the petition to those persons who would be entitled to notice of the petition in this state and in the respondent's home state.

Section 17. Section 744.89, Florida Statutes, is created to read:

744.89 Proceedings in more than one state.—Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court of this state has jurisdiction under this

chapter, it may proceed with the case unless a court of another state acquires jurisdiction before the appointment of the guardian or issuance of the order.

(2) If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination of same, whether at the time the petition is filed or at any time before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination of same, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum.

Section 18. Section 744.90, Florida Statutes, is created to read:

744.90 Transfer of guardianship to another state.—

(1) A guardian appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under subsection (1) must be given to all parties who would be entitled to notice of a petition in this state for the appointment of a guardian or a petition for a change of residence of the ward.

(3) On the court's own motion or upon request of the guardian, the incapacitated person, or both, the court shall hold a hearing on a petition filed under subsection (1).

(4) The court may issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will likely be accepted

by the court of the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the best interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred and issued under provisions similar to s. 744.89; and

(b) The documents required, including any required accountings, to terminate a guardianship in this state.

(6) The guardian of the ward in this state shall file a petition for discharge in accordance with part VII of this chapter within 60 days after receipt of an order confirming the transfer of the guardianship to another jurisdiction.

Section 19. Section 744.91, Florida Statutes, is created to read:

744.91 Accepting guardianship transferred from another state.—

(1) Within 60 days after the residence of a ward of a foreign guardian is moved to this state, the foreign guardian appointed in another state shall file a petition to determine incapacity and a petition to appoint a guardian with the clerk of court in the county in which the ward resides. The petitions

must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

(2) Notice of the petitions under subsection (1) must be given to those persons who would be entitled to notice in this state in the same manner as notice is required to be given in this state and the respondent's home state.

(3) The court shall hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

(4) The court shall issue orders provisionally granting the petitions unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or

(b) The guardian is ineligible for appointment in this state.

(5) Until such time as a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. A foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

(6) After appointment of a guardian in this state, the court may issue such orders as necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

(7) The authority of the guardian of a nonresident ward

shall be recognized and given full faith and credit in the courts of this state. A guardian appointed in another state or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state.

Section 20. Section 744.92, Florida Statutes, is created to read:

744.92 Registration of guardianship orders.—If a guardian has been appointed in another state and a petition for the appointment of a guardianship is not pending in this state, the guardian appointed in the other state, after giving notice of the appointment to the appointing court of the intent to register, may register the guardianship order in this state by filing it as a foreign judgment in a court of this state pursuant to ss. 744.307 and 744.308.

Section 21. Section 744.93, Florida Statutes, is created to read:

744.93 Effect of registration.—Upon registration of a guardianship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties.

Section 22. Section 744.94, Florida Statutes, is created to read:

744.94 Uniformity of application and construction.—In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 23. Section 744.95, Florida Statutes, is created to read:

744.95 Relation to federal Electronic Signatures in Global and National Commerce Act.—This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 24. Section 744.96, Florida Statutes, is created to read:

744.96 Application.—This part applies to guardianship and similar proceedings filed on or after July 1, 2022.

Section 25. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/22
Meeting Date

Senate Judiciary
Committee

1032
Bill Number or Topic

Amendment Barcode (if applicable)

Name Victoria E. Heuler

Phone 850-421-2400

Address 1677 Mahan Center Blvd.
Street

Email victoria@hwelderlaw.com

Tallahassee FL 32308
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Jan 24 2022
Meeting Date

Judiciary
Committee

SB1032
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elizabeth Hughes

Phone 305-304-9190

Address 50 SW 18th Terrace
Street

Email liz.hughes@akerman.com

Miami, FL 33129
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
RPPTL

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S-001 (08/10/2021)

DUPLICATE

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022	1032
Meeting Date	Bill Number or Topic
Judiciary	124534
Committee	Amendment Barcode (if applicable)

Name Bryan Cherry

Phone (850) 544-5673

Address 110 East College Avenue, STE, 110
Street

Email bryan@pinpointresults.com

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Public Guardian Coalition

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022
Meeting Date

Judiciary
Committee

1032 - Guardianships
Bill Number or Topic

Amendment Barcode (if applicable)

Name Zayne Smith

Phone 850.228.4243

Address 215 S. Monroe St.
Street

Email zsmith@aarp.org

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

SPEAKING

WAIVING

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
AARP

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/24/2022
Meeting Date

Senate Judiciary
Committee

SB 1032
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Ross

Phone 727-510-9821

Address PO Box 17500
Street

Email adam.ross@FLSA6.GOV

Clearwater FL 33762
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: State Attorney's office Sixth Judicial Circuit

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

January 24, 2022

Senator Danny Burgess
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Burgess:

I am writing to request approval to be excused from the Committee on Judiciary meeting scheduled for today, Monday, January 24, 2022, due to illness.

I appreciate your consideration in this matter.

Sincerely,

Jim Boyd

cc: Tom Cibula
Celia Georgiades

REPLY TO:
❒ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: *www.flsenate.gov*

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: 1/24/2022 3:01:42 PM
Ends: 1/24/2022 5:00:06 PM Length: 01:58:25

3:01:41 PM Meeting called to order by Chair Burgess
3:01:46 PM Roll call by CAA Celia Georgiades
3:02:03 PM Quorum present
3:02:07 PM Chair Burgess says to let the record reflect that Senator Gibson is present and Senator Boyd is excused from meeting
3:02:24 PM Comments from Chair Burgess
3:02:41 PM Introduction of Tab 1, SB 840 by Chair Burgess
3:02:55 PM Explanation of SB 840, Residential Property Riparian Rights by Senator Albritton
3:04:00 PM Comments from Chair Burgess
3:04:11 PM Closure waived
3:04:18 PM Roll call by CAA
3:04:23 PM SB 840 reported favorably
3:04:52 PM Introduction of Tab 7, SB 536 by Chair Burgess
3:05:07 PM Explanation of SB 536, Administrative Procedure by Senator Diaz
3:05:46 PM Comments from Chair Burgess
3:05:56 PM Phillip Suderman, American for Prosperity waives in support
3:06:02 PM Christian Camara, Institute for Justice waives in support
3:06:10 PM Comments from Chair Burgess
3:06:13 PM Closure waived
3:06:18 PM Roll call by CAA
3:06:23 PM SB 536 reported favorably
3:06:40 PM Introduction of Tab 5, SB 80 by Chair Burgess
3:06:49 PM Explanation of SB 80, Relief of Christeia Jones/Department of Highway Safety and Motor Vehicles by Senator Baxley
3:08:22 PM Introduction of Amendment Barcode No. 437360 by Chair Burgess
3:08:27 PM Explanation of Amendment by Senator Baxley
3:08:53 PM Comments from Chair Burgess
3:09:00 PM Closure waived
3:09:03 PM Amendment adopted
3:09:08 PM Comments from Chair Burgess
3:09:16 PM Senator Baxley in closure
3:09:25 PM Roll call by CAA
3:09:29 PM CS/SB 80 reported favorably
3:09:44 PM Comments from Senator Baxley
3:10:01 PM Introduction of Tab 9, SB 1032 by Chair Burgess
3:10:26 PM Chair passed to Senator Gibson
3:10:35 PM Introduction of Tab 9, SB 1032 by Chair Gibson
3:10:39 PM Explanation of SB 1032, Guardianships by Senator Burgess
3:11:32 PM Comments from Chair Gibson
3:11:58 PM Zayne Smith, AARP waives in support
3:12:09 PM Bryan Cherry, Florida Public Guardian Coalition waives in support
3:12:22 PM Introduction of Amendment Barcode No. 124534 by Chair Gibson

3:12:29 PM Explanation of Amendment by Senator Burgess
3:12:46 PM Comments from Chair Gibson
3:12:52 PM Closure waived
3:13:01 PM Amendment adopted
3:13:07 PM Comments from Chair Gibson
3:13:20 PM Speaker Elizabeth Hughes, RPPTL, Florida Bar in opposition
3:18:07 PM Speaker Victoria Heuler, Florida Bar, Elder Law Section in support
3:20:05 PM Zayne Smith, AARP waives in support
3:20:17 PM Adam Ross, State Attorney's Office, Sixth Judicial Circuit waives in support
3:20:34 PM Comments from Chair Gibson
3:20:43 PM Senator Burgess in closure
3:20:50 PM Roll call by CAA
3:21:29 PM CS/SB 1032 reported favorably
3:21:42 PM Chair returned to Senator Burgess
3:21:52 PM Introduction of Tab 2, SB 1408 by Chair Burgess
3:21:58 PM Explanation of SB 1408, Grandparent Rights in Dependency Proceedings by Senator Perry
3:22:25 PM Introduction of Amendment Barcode No. 515886 by Chair Burgess
3:22:33 PM Explanation of Amendment by Senator Perry
3:22:38 PM Comments from Chair Burgess
3:22:50 PM Closure waived
3:22:53 PM Amendment adopted
3:23:06 PM Comments from Chair Burgess
3:23:14 PM Zayne Smith, AARP waives in support
3:23:17 PM Philip Wartenberg, Family Law Section of the Florida Bar waives in opposition
3:23:25 PM Ron Watson waives in support
3:23:33 PM Senator Rouson in debate
3:24:13 PM Senator Baxley in debate
3:24:45 PM Comments from Chair Burgess
3:24:51 PM Senator Perry in closure
3:25:06 PM Roll call by CAA
3:25:11 PM CS/SB 1408 reported favorably
3:25:28 PM Introduction of Tab 4, SB 70 by Chair Burgess
3:25:39 PM Explanation of SB 70, Relief of Donna Caralano by the Department of Agriculture and Consumer Services by Senator Rouson
3:26:49 PM Comments from Chair Burgess
3:27:04 PM Closure waived
3:27:07 PM Roll call by CAA
3:27:12 PM SB 70 reported favorably
3:27:28 PM Introduction of Tab 8, SB 968 by Chair Burgess
3:27:45 PM Explanation of SB 968, Individual Retirement Accounts by Senator Polsky
3:27:53 PM Comments from Chair Burgess
3:28:06 PM Closure waived
3:28:11 PM Roll call by CAA
3:28:18 PM SB 968 reported favorably
3:28:51 PM Comments from Chair Burgess
3:29:07 PM Senator Rouson would like to be shown voting in the affirmative SB 536, CS/SB 80, SB 840
3:29:25 PM Senator Polsky would like to be shown voting in the affirmative on SB 536 and SB 840
3:29:36 PM Senator Broxson would like to be shown voting in the affirmative on CS/SB 80, CS/SB 1032, CS/SB 1408 and SB 70
3:29:51 PM Senator Mayfield would like to be shown voting in the affirmative on SB 70

3:30:08 PM Comments from Chair Burgess
3:30:12 PM Informal recess
3:30:19 PM Recording Paused
3:36:30 PM Recording Resumed
3:36:33 PM Meeting back to order
3:36:37 PM Comments from Chair Burgess
3:36:48 PM Introduction of Tab 3, SB 1808 by Chair Burgess
3:36:57 PM Explanation of SB 1808, Immigration Enforcement by Senator Bean
3:39:13 PM Comments from Chair Burgess
3:39:21 PM Question from Senator Polsky
3:39:27 PM Response from Senator Bean
3:39:44 PM Follow-up question from Senator Polsky
3:40:42 PM Response from Senator Bean
3:40:55 PM Follow-up question from Senator Polsky
3:41:34 PM Response from Senator Bean
3:42:10 PM Follow-up question from Senator Polsky
3:42:17 PM Response from Senator Bean
3:42:44 PM Question from Senator Gibson
3:42:51 PM Response from Senator Bean
3:43:03 PM Follow-up question from Senator Gibson
3:43:18 PM Response from Senator Bean
3:44:03 PM Follow-up question from Senator Gibson
3:44:13 PM Response from Senator Bean
3:44:21 PM Follow-up question from Senator Gibson
3:44:45 PM Response from Senator Bean
3:45:01 PM Follow-up question from Senator Gibson
3:45:09 PM Response from Senator Bean
3:45:26 PM Follow-up question from Senator Gibson
3:45:50 PM Response from Senator Bean
3:46:01 PM Follow-up question from Senator Gibson
3:46:26 PM Response from Senator Bean
3:46:55 PM Follow-up question from Senator Gibson
3:47:35 PM Response from Senator Bean
3:47:58 PM Follow-up question from Senator Gibson
3:48:35 PM Response from Senator Bean
3:48:49 PM Follow-up question from Senator Gibson
3:49:09 PM Response from Senator Bean
3:49:41 PM Question from Senator Broxson
3:50:00 PM Response from Senator Bean
3:50:53 PM Follow-up question from Senator Broxson
3:51:54 PM Response from Senator Bean
3:52:18 PM Question from Senator Polsky
3:52:33 PM Response from Senator Bean
3:52:55 PM Follow-up question from Senator Polsky
3:53:03 PM Response from Senator Bean
3:53:33 PM Follow-up question from Senator Polsky
3:54:05 PM Response from Senator Bean
3:54:29 PM Follow-up question from Senator Polsky
3:54:37 PM Response from Senator Bean
3:54:42 PM Follow-up question from Senator Polsky
3:54:54 PM Response from Senator Bean
3:55:17 PM Follow-up question from Senator Polsky

3:55:29 PM Response from Senator Bean
3:56:04 PM Follow-up question from Senator Polsky
3:56:34 PM Response from Senator Bean
3:56:59 PM Follow-up question from Senator Polsky
3:57:28 PM Response from Senator Bean
3:58:03 PM Question from Senator Gibson
3:58:09 PM Response from Senator Bean
3:58:27 PM Follow-up question from Senator Gibson
3:58:43 PM Response from Senator Bean
3:59:17 PM Follow-up question from Senator Gibson
4:00:01 PM Response from Senator Bean
4:00:16 PM Follow-up question from Senator Gibson
4:00:34 PM Response from Senator Bean
4:01:48 PM Comments from Chair Burgess
4:02:28 PM Speaker Yareliz Mindez-Zumora in opposition
4:05:25 PM Speaker Thomas Kinnedy in opposition
4:07:10 PM Towson Frasier, The American Business Immigration Coalition waives in opposition
4:07:30 PM Speaker Danielle Chanzes in opposition
4:09:34 PM Speaker Melissa Taveras, Florida Immigration Coalition in opposition
4:12:42 PM Neisha-Rose Hines, ACLU FL waives in opposition
4:13:43 PM Speaker Ida Eskamani, Florida Immigrant Coalition in opposition
4:15:16 PM Speaker Paul Christian Namphy, FANM waives in opposition
4:17:48 PM Speaker JJ Holmes in opposition
4:21:14 PM Dann Scott, Jr., Southern Poverty Law Action Center waives in opposition
4:21:20 PM Speaker Karen Woodall, FL Center for Fiscal & Economic Policy in opposition
4:23:39 PM Pamela Burch Fort, NAACP Florida State Conference waives in opposition
4:24:40 PM Barbara DeVane, FL NOW waives in opposition
4:24:43 PM Ashley Hamill waives in opposition
4:24:51 PM Speaker S. Azpuna in opposition
4:26:26 PM David Sedingfield waives in opposition
4:27:26 PM Deborah Postgate waives in opposition
4:27:35 PM Speaker Pastor Tracy Stallworth in opposition
4:29:29 PM Speaker Michi C, FL Student Power in opposition
4:31:43 PM David Caicedo waives in opposition
4:32:49 PM Comments from Chair Burgess
4:32:58 PM Senator Polsky in debate
4:34:34 PM Senator Gibson in debate
4:38:51 PM Senator Rodrigues in debate
4:40:39 PM Senator Bean in closure
4:41:38 PM Roll call by CAA
4:42:36 PM SB 1808 reported favorably
4:42:59 PM Introduction of Tab 6, SB 1796 by Chair Burgess
4:43:22 PM Explanation of SB 1796, Dissolution of Marriage by Senator Gruters
4:44:30 PM Introduction of Amendment Barcode No. 706994 by Chair Burgess
4:44:37 PM Explanation of Amendment by Senator Gruters
4:44:41 PM Comments from Chair Burgess
4:44:48 PM Closure waived
4:44:51 PM Amendment adopted
4:45:03 PM Question from Senator Rodrigues
4:45:11 PM Response from Senator Gruters
4:45:51 PM Question from Senator Gibson
4:46:51 PM Response from Senator Gruters

4:47:27 PM Follow-up question from Senator Gibson
4:47:37 PM Response from Senator Gruters
4:47:54 PM Question from Senator Rouson
4:48:54 PM Response from Senator Gruters
4:49:50 PM Comments from Chair Burgess
4:50:37 PM Speaker Philip Wartenburg, Family Law Section of the FL Bar in opposition
4:51:20 PM Barbara DeVane, FL Now in opposition
4:51:28 PM Speaker Cynthia Lus in opposition
4:51:46 PM Speaker Michael Buhler in support
4:53:08 PM Senator Baxley motion for a time certain vote at 4:59 pm
4:53:42 PM Motion adopted
4:54:19 PM Speaker Tina Miller in opposition
4:54:59 PM Speaker Lisa Athey in opposition
4:55:26 PM Lis Harris waives in opposition
4:55:28 PM Speaker Shannon Novey in opposition
4:56:17 PM Speaker Camille Fiveash in opposition
4:58:21 PM Comments from Chair Burgess
4:59:01 PM Senator Gruters in closure
4:59:07 PM Roll call by CAA
4:59:15 PM CS/SB 1796 reported favorably
4:59:32 PM Comments from Chair Burgess
4:59:44 PM Senator Bradley moves to adjourn
4:59:55 PM Meeting adjourned