



Civil Justice Subcommittee

Wednesday, November 16, 2011

1:30 PM

404 HOB

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, November 16, 2011 01:30 pm
End Date and Time: Wednesday, November 16, 2011 03:30 pm
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 401 Effect of Dissolution or Annulment of Marriage on Certain Designations by Moraitis
HB 481 Clerks of Court by Pilon
HB 483 Uniform Commercial Code by Passidomo
HB 4055 Supreme Court by Metz
HB 4067 Marshals of District Courts of Appeal by Weinstein
HB 4069 County Courts by Weinstein
HB 4077 Actions for Damages by Metz
HB 4081 District Courts Of Appeal by Weinstein
HB 4093 Court Costs by Porter

NOTICE FINALIZED on 11/09/2011 16:16 by Jones.Missy

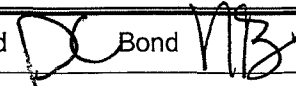
HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Effect of Dissolution or Annulment of Marriage on Certain Designations

SPONSOR(S): Moraitis

TIED BILLS: None

IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad	 Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following divorce or annulment, the will is executed as though the former spouse predeceased the decedent. In contrast, there is no such provision under Florida Statute for the disposition of certain non-probate or non-trust assets (i.e. a life insurance policy; an employee benefit plan) where the decedent is no longer married but has failed to remove the former spouse as the designated beneficiary. Neither does the law provide for instances where an individual fails to remove his or her former spouse as health care surrogate or surrogate appointed under a living will following the dissolution of marriage or annulment.

The bill provides that when an individual dies after a dissolution or annulment of marriage, a beneficiary designation, created by the individual prior to the divorce, which designates the spouse as a beneficiary, becomes void upon the dissolution or annulment of marriage. Whether a payor must make payment to or transfer an interest in an asset to a beneficiary is governed by the information provided in the decedent's death certificate.

The bill also terminates the authority of a health care surrogate or surrogate appointed under a living will upon the divorce or annulment of the marriage between the surrogate and the principal. After the dissolution of marriage, the living will or document designating the former spouse as health care surrogate is administered as though the former spouse predeceased the principal unless the document or final judgment of dissolution of marriage provides otherwise.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Disposition of Non-probate or Non-trust Assets at Death

Chapter 732 governs wills. Section 732.507(2), F.S., provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following the dissolution or annulment, the will is executed as though the former spouse predeceased the decedent.

There is no such provision regarding the disposition of non-probate or non-trust assets (i.e. a life insurance policy an employee benefit plan) where the decedent is no longer married at the time of death but has failed to remove the former spouse as the designated beneficiary.¹ Currently, when an individual dies after a divorce or annulment without removing his or her former spouse as the designated beneficiary of certain assets, the former spouse will remain the designated beneficiary, despite the dissolution or annulment of marriage. The company or entity administering the policy or account then pays the beneficiary listed on the governing document. Under current law, the company or entity is under no obligation to investigate the claim beyond looking to the governing document for the named beneficiary.

There are many cases where a decedent owned an interest in non-probate assets, divorced, and subsequently died without changing the beneficiary designation to remove the former spouse. When a party challenges the distribution of assets to the former spouse, the court's determination turns on the specificity of the language in the marital settlement agreement.² In *Crawford v. Barker*³, the Florida Supreme Court explained that:

[A]bsent the marital settlement agreement providing who is or is not to receive the death benefits or specifying who is to be the beneficiary, courts should look no further than the named beneficiary in the separate document of the policy, plan, or account. General language in a marital settlement agreement, such as language stating who is to receive ownership, is not specific enough to override the plain language of the beneficiary designation in the separate document. The spouse, who owns the policy, plan, or account following the dissolution of marriage, is otherwise free to name any individual as the beneficiary; however, if the spouse does not change the beneficiary, the beneficiary designation in the separate document controls.

Ultimately, a divorce or annulment does not remove the former spouse as the designated beneficiary unless the settlement agreement specifically makes such a change.⁴

This bill provides that when an individual dies after dissolution or annulment, a beneficiary designation which designates the spouse as a beneficiary becomes void upon the divorce and the spouse is

¹ See generally *Luszcz v. Lavoie*, 787 So. 2d 245, 250 (Fla. 2d DCA 2001) (Blue, J., dissenting) ("[T]he legislature may wish to consider enacting a law similar to sections 732.507 and 737.106 to cover assets passing outside an estate or trust.")

² See *Cooper v. Muccitelli*, 682 So. 2d 77 (Fla. 1996) (holding that former spouse as named beneficiary was entitled to term insurance proceeds, notwithstanding general release clause in marital settlement agreement).

³ *Crawford v. Barker*, 64 So. 3d 1246 (Fla. 2011).

⁴ See, e.g., *Id.* (holding that the former spouse as named beneficiary was entitled to the death benefits on the decedent's deferred compensation fund despite language in the settlement agreement which provided that the decedent "shall retain money with" the deferred compensation fund as the agreement did not state who would receive the death benefits or who should be the beneficiary of the fund); see also *Smith v. Smith*, 919 So. 2d 525 (Fla. 5th DCA 2005) (holding that the former wife was entitled to the proceeds from certain assets, even though the marital settlement agreement specifically identified the assets at issue and provided that the former wife would have "no further rights or responsibilities regarding these assets," because the decedent failed to change the beneficiary designation on any of the policies or accounts at issue).

deemed to have predeceased the decedent. The bill also provides a list of assets which are subject to the bill, specifically:

- A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- An employee benefit plan;
- An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986;
- A payable-on-death account;
- A security or other account registered in a transfer-on-death form; and
- A life insurance policy, annuity or other similar contract that is not held within an employee benefit plan or tax-qualified retirement account.

The bill provides certain exceptions. For instance, it does not apply:

- To the extent that controlling federal law provides otherwise;
- If the governing instrument⁵ expressly provides that the interest will be payable to the designated former spouse regardless of dissolution or invalidity of the decedent's marriage;
- If a court order or decree required the decedent to maintain the asset for benefit of the former spouse of children of the marriage;
- If the decedent did not have the ability to unilaterally change the beneficiary or pay-on-death designation;
- If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
- If the contract or agreement is governed by state law other than Florida.
- To an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners; or
- If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death.

Subsection (5) of the bill sets forth procedures for companies or entities charged with making payment of the decedent's interest in an asset to determine the proper payee of the account. If the governing instrument does not specify the relationship between the designated beneficiary and the decedent, the payor may pay the account to the named beneficiary without further inquiry. If the governing instrument specifies the beneficiary to be the spouse of the decedent, the payor must first look to the death certificate. If the death certificate provides that the decedent was married to the named beneficiary at the time of death, the payor may pay out the benefits to the named beneficiary. If the death certificate provides that the decedent was not married, or was married to another individual other than the person specified on the account as the spouse, the payor may pay the interest out to the secondary beneficiary under the governing instrument.

In instances where the death certificate is silent as to the marital status of the decedent, the bill provides two form affidavits. One affidavit is for execution by someone alleging to be the surviving spouse of the decedent. If the alleged surviving spouse executes the affidavit, certifying that he or she is the surviving spouse of the decedent and that the decedent was married to him or her at the time of the decedent's death, the payor may pay the account to such individual without further inquiry. Similarly, the other affidavit is for execution by a secondary beneficiary, certifying that the primary beneficiary was not married to the decedent at the time of the decedent's death. The payor may also pay out the interest to the secondary beneficiary upon receipt of a properly executed affidavit.

Subsection (6) provides that in the case of pay-on-death accounts, securities or other accounts registered in transfer-on-death form, and life insurance policies, annuities or other similar contracts not

⁵ Defined in the bill as "any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent."

held within an employee benefit plan or a tax-qualified retirement account, the payor may pay out those interests without further inquiry.

Subsection (8) provides that the bill does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

Health Care Advance Directives

Chapter 765 governs health care advance directives. An "advance directive" is defined as

[A] witnesses document or oral statement in which instructions are given by a principal or in which the principal's desires are expressed concerning any aspect of the principal's health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift [].⁶

The statute was enacted "as a method for a 'competent adult' to provide, in advance, a written declaration directing the withholding of life-prolonging procedures in the event of a terminal condition."⁷ The statute further provides a method whereby certain enumerated persons, together with the attending physician, may act on behalf of an incompetent patient who has not made a declaration in accordance with s. 765.04, F.S.⁸ Where the designated or alternate surrogate is no longer available, willing, or competent to make health care decisions for the incapacitated patient, the statute provides a list of individuals, in order of priority, to act on behalf of the patient.⁹

Current law does not provide for instances where a principal fails to remove his or her former spouse as health care surrogate or surrogate appointed under a living will following the dissolution or annulment of marriage.

The bill terminates the authority of a health care surrogate or surrogate appointed under a living will upon the divorce or annulment of the marriage between the surrogate and the principal unless the document or the final judgment of dissolution provides otherwise.

B. SECTION DIRECTORY:

Section 1 creates s. 732.703, F.S., regarding effect of dissolution on beneficiary designations.

Section 2 creates s. 765.2021, F.S., regarding health care surrogate designations.

Section 3 creates s. 765.3031, F.S., regarding living wills.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

⁶ Section 765.101(1), F.S.

⁷ *Corbett v. D'Alessandro*, 487 So. 2d 368, 370 (Fla. 2d DCA 1986).

⁸ Section 765.202, F.S., (providing the responsibilities of the surrogate).

⁹ Section 765.401(1)(a)-(h), F.S.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Companies administering the non-probate assets at issue may incur some additional administrative costs. However, such costs are unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to effect of dissolution or annulment
 3 of marriage on certain designations; creating s.
 4 732.703, F.S.; providing definitions; providing that a
 5 designation made by or on behalf of a decedent
 6 providing for the payment or transfer at death of an
 7 interest in an asset to or for the benefit of the
 8 decedent's former spouse shall become void if the
 9 decedent's marriage was judicially dissolved or
 10 declared invalid before the decedent's death, if the
 11 designation was made prior to the dissolution or
 12 order; providing for disposition of assets; providing
 13 for treatment of certain retirement plans; specifying
 14 assets subject to provisions; providing exceptions;
 15 providing that payors are not liable for payments or
 16 transfers to beneficiaries contrary to this provision
 17 in certain circumstances; specifying the form of an
 18 affidavit that may be used to relieve a payor of
 19 liability for a transfer if the death certificate is
 20 silent as to the decedent's marital status at the time
 21 of death; providing that the payor is not liable for
 22 making any payment on account of, or transferring any
 23 interest in, certain types of assets to a beneficiary;
 24 providing that certain provisions apply
 25 notwithstanding the payor's knowledge that the person
 26 to whom the asset is transferred is different from the
 27 person who would own the interest due to the
 28 dissolution of the decedent's marriage or declaration

29 of the marriage's validity before the decedent's
 30 death; providing that the provisions do not affect
 31 specified interests and rights; creating ss. 765.2021
 32 and 765.3031, F.S.; providing that a spouse's
 33 authority as a health care surrogate or a surrogate
 34 under a living will, respectively, terminates upon the
 35 dissolution or annulment of the marriage, unless the
 36 document or the final judgment of dissolution provides
 37 otherwise; providing for the administration of the
 38 declaration of health care surrogacy or living will
 39 after the dissolution or annulment; providing
 40 applicability; providing an effective date.

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

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 44 Section 1. Section 732.703, Florida Statutes, is created
 45 to read:

46 732.703 Effect of divorce, dissolution, or invalidity of
 47 marriage on disposition of certain assets at death.—

48 (1) As used in this section, unless the context requires
 49 otherwise, the term:

50 (a) "Asset," when not modified by other words or phrases,
 51 means an asset described in subsection (3).

52 (b) "Beneficiary" means any person designated in a
 53 governing instrument to receive an interest in an asset upon the
 54 death of the decedent.

55 (c) "Death certificate" means a certified copy of a death
 56 certificate issued by an official or agency for the place where
 57 the decedent's death occurred.

58 (d) "Employee benefit plan" means any funded or unfunded
 59 plan, program, or fund established by an employer to provide an
 60 employee's beneficiaries with benefits that may be payable on
 61 the employee's death.

62 (e) "Governing instrument" means any writing or contract
 63 governing the disposition of all or any part of an asset upon
 64 the death of the decedent.

65 (f) "Payor" means any person obligated to make payment of
 66 the decedent's interest in an asset upon the death of the
 67 decedent, and any other person who is in control or possession
 68 of an asset.

69 (g) "Primary beneficiary" means a beneficiary designated
 70 under the governing instrument to receive an interest in an
 71 asset upon the death of the decedent who is not a secondary
 72 beneficiary. A person who receives an interest in the asset upon
 73 the death of the decedent due to the death of another
 74 beneficiary prior to the decedent's death is also a primary
 75 beneficiary.

76 (h) "Secondary beneficiary" means a beneficiary designated
 77 under the governing instrument who will receive an interest in
 78 an asset if the designation of the primary beneficiary is
 79 revoked or otherwise cannot be given effect.

80 (2) A designation made by or on behalf of the decedent
 81 providing for the payment or transfer at death of an interest in
 82 an asset to or for the benefit of the decedent's former spouse

83 is void as of the time the decedent's marriage was judicially
 84 dissolved or declared invalid by court order prior to the
 85 decedent's death, if the designation was made prior to the
 86 dissolution or court order. The decedent's interest in the asset
 87 shall pass as if the decedent's former spouse predeceased the
 88 decedent. An individual retirement account described in s. 408
 89 or s. 408A of the Internal Revenue Code of 1986, or an employee
 90 benefit plan, may not be treated as a trust for purposes of this
 91 section.

92 (3) Subsection (2) applies to the following assets in
 93 which a resident of this state has an interest at the time of
 94 the resident's death:

95 (a) A life insurance policy, qualified annuity, or other
 96 similar tax-deferred contract held within an employee benefit
 97 plan.

98 (b) An employee benefit plan.

99 (c) An individual retirement account described in s. 408
 100 or s. 408A of the Internal Revenue Code of 1986, including an
 101 individual retirement annuity described in s. 408(b) of the
 102 Internal Revenue Code of 1986.

103 (d) A payable-on-death account.

104 (e) A security or other account registered in a transfer-
 105 on-death form.

106 (f) A life insurance policy, annuity, or other similar
 107 contract that is not held within an employee benefit plan or a
 108 tax-qualified retirement account.

109 (4) Subsection (2) does not apply:

110 (a) To the extent that controlling federal law provides
 111 otherwise;

112 (b) If the governing instrument is signed by the decedent,
 113 or on behalf of the decedent, after the order of dissolution or
 114 order declaring the marriage invalid and such governing
 115 instrument expressly provides that benefits will be payable to
 116 the decedent's former spouse;

117 (c) To the extent a will or trust governs the disposition
 118 of the assets and s. 732.507(2) or s. 736.1005 applies;

119 (d) If the order of dissolution or order declaring the
 120 marriage invalid requires that the decedent acquire or maintain
 121 the asset for the benefit of a former spouse or children of the
 122 marriage, payable upon the death of the decedent either outright
 123 or in trust, only if other assets of the decedent fulfilling
 124 such a requirement for the benefit of the former spouse or
 125 children of the marriage do not exist upon the death of the
 126 decedent;

127 (e) If, under the terms of the order of dissolution or
 128 order declaring the marriage invalid, the decedent could not
 129 have unilaterally terminated or modified the ownership of the
 130 asset, or its disposition upon the death of the decedent;

131 (f) If the designation of the decedent's former spouse as
 132 a beneficiary is irrevocable under applicable law;

133 (g) If the instrument directing the disposition of the
 134 asset at death is governed by the laws of a state other than
 135 this state;

136 (h) To an asset held in two or more names as to which the
 137 death of one coowner vests ownership of the asset in the
 138 surviving coowner or coowners; or

139 (i) If the decedent remarries the person whose interest
 140 would otherwise have been revoked under this section and the
 141 decedent and that person are married to one another at the time
 142 of the decedent's death.

143 (5) In the case of an asset described in paragraph (3)(a),
 144 paragraph (3)(b), or paragraph (3)(c), unless payment or
 145 transfer would violate a court order directed to, and served as
 146 required by law on, the payor:

147 (a) If the governing instrument does not explicitly
 148 specify the relationship of the beneficiary to the decedent or
 149 if the governing instrument explicitly provides that the
 150 beneficiary is not the decedent's spouse, the payor is not
 151 liable for making any payment on account of, or transferring any
 152 interest in, the asset to the beneficiary.

153 (b) As to any portion of the asset required by the
 154 governing instrument to be paid after the decedent's death to a
 155 primary beneficiary explicitly designated in the governing
 156 instrument as the decedent's spouse:

157 1. If the death certificate states that the decedent was
 158 married at the time of his or her death to that spouse, the
 159 payor is not liable for making a payment on account of, or for
 160 transferring an interest in, that portion of the asset to such
 161 primary beneficiary.

162 2. If the death certificate states that the decedent was
 163 not married at the time of his or her death, or if the death

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164 certificate states that the decedent was married to a person
 165 other than the spouse designated as the primary beneficiary at
 166 the time of his or her death, the payor is not liable for making
 167 a payment on account of, or for transferring an interest in,
 168 that portion of the asset to a secondary beneficiary under the
 169 governing instrument.

170 3. If the death certificate is silent as to the decedent's
 171 marital status at the time of his or her death, the payor is not
 172 liable for making a payment on account of, or for transferring
 173 an interest in, that portion of the asset to the primary
 174 beneficiary upon delivery to the payor of an affidavit validly
 175 executed by the primary beneficiary in substantially the
 176 following form:

177
 178 STATE OF _____
 179 COUNTY OF _____

180 Before me, the undersigned authority, personally
 181 appeared ... (type or print affiant's name)...
 182 ("Affiant"), who swore or affirmed that:

183 1. ... (Type or print name of decedent)...
 184 ("Decedent") died on ... (type or print the date of the
 185 Decedent's death)....

186 2. Affiant is a "primary beneficiary" as that
 187 term is defined in Section 732.703, Florida Statutes.
 188 Affiant and Decedent were married on ... (type or print
 189 the date of marriage)..., and were legally married to
 190 one another on the date of the Decedent's death.

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...(Affiant)...

Sworn to or affirmed before me by the affiant who
is personally known to me or who has produced
...(state type of identification)... as identification
this day of ...(month)..., ...(year)....
...(Signature of Officer)...
...(Print, Type, or Stamp Commissioned name of Notary
Public)...

4. If the death certificate is silent as to the decedent's
marital status at the time of his or her death, the payor is not
liable for making a payment on account of, or for transferring
an interest in, that portion of the asset to the secondary
beneficiary upon delivery to the payor of an affidavit validly
executed by the secondary beneficiary affidavit in substantially
the following form:

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally
appeared ...(type or print affiant's name)...
("Affiant"), who swore or affirmed that:
1. ...(Type or print name of decedent)...
("Decedent") died on ...(type or print the date of the
Decedent's death)....

218 2. Affiant is a "secondary beneficiary" as that
 219 term is defined in Section 732.703, Florida Statutes.
 220 On the date of the Decedent's death, the Decedent was
 221 not legally married to the spouse designated as the
 222 "primary beneficiary" as that term is defined in
 223 Section 732.703, Florida Statutes.

224 Sworn to or affirmed before me by the affiant who
 225 is personally known to me or who has produced
 226 ...(state type of identification)... as identification
 227 this day of ...(month)..., ...(year)....
 228 ...(Signature of Officer)...
 229 ...(Print, Type, or Stamp Commissioned name of Notary
 230 Public)...

231
 232 (6) In the case of an asset described in paragraph (3)(d),
 233 paragraph (3)(e), or paragraph (3)(f), the payor is not liable
 234 for making any payment on account of, or transferring any
 235 interest in, the asset to any beneficiary.

236 (7) Subsections (5) and (6) apply notwithstanding the
 237 payor's knowledge that the person to whom the asset is
 238 transferred is different from the person who would own the
 239 interest pursuant to subsection (2).

240 (8) This section does not affect the ownership of an
 241 interest in an asset as between the former spouse and any other
 242 person entitled to such interest by operation of this section,
 243 the rights of any purchaser for value of any such interest, the
 244 rights of any creditor of the former spouse or any other person
 245 entitled to such interest, or the rights and duties of any

246 insurance company, financial institution, trustee,
 247 administrator, or other third party.

248 (9) This section applies to all designations made by or on
 249 behalf of decedents dying on or after July 1, 2012, regardless
 250 of when the designation was made.

251 Section 2. Section 765.2021, Florida Statutes, is created
 252 to read:

253 765.2021 Termination of authority upon dissolution of
 254 marriage.-

255 (1) Upon the dissolution or annulment of a marriage, a
 256 former spouse's authority as a health care surrogate terminates
 257 upon the dissolution or annulment of the marriage, unless the
 258 document or the final judgment of dissolution or annulment
 259 provides otherwise. After the dissolution or annulment, the
 260 document designating a health care surrogate shall be
 261 administered as if the former spouse predeceased the other
 262 spouse and is therefore unable to perform his or her duties. The
 263 remainder of the document shall be unaffected.

264 (2) This section applies to all final judgments of
 265 dissolution or annulment entered on or after July 1, 2012.

266 Section 3. Section 765.3031, Florida Statutes, is created
 267 to read:

268 765.3031 Termination of authority upon dissolution of
 269 marriage.-

270 (1) Upon the dissolution or annulment of a marriage, a
 271 former spouse's authority as a surrogate for the other spouse
 272 under a living will terminates upon the dissolution or annulment
 273 of the marriage, unless the document or the final judgment of

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274 dissolution or annulment provides otherwise. After the
275 dissolution or annulment, the living will shall be administered
276 as if the former spouse predeceased the other spouse, and the
277 remainder of the document shall be unaffected.

278 (2) This section applies to all final judgments of
279 dissolution or annulment entered on or after July 1, 2012.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 481 Clerks of Court
SPONSOR(S): Pilon
TIED BILLS: None IDEN./SIM. BILLS: SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JAC</i>	Bond <i>YB</i>
2) Government Operations Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

This bill amends several sections of the Florida Statutes relating to the clerks of the circuit courts. The bill:

- Provides guidelines for electronic filing of documents;
- Requires clerks to seal or expunge certain court documents upon an order from a magistrate;
- Requires persons filing a written request to have their personal information disclosed under the public records statutes to specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information;
- Increases the minimum amount the clerks are required to refund without a written request in the event of an overpayment from \$5 to \$10;
- Limits the state agency exemption from having to pay court-related fees to the state agency and the party it is representing;
- Authorizes the filing of electronic affidavits regarding publication of a legal advertisement; and
- Provides that, following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

The bill may have a positive, indeterminate fiscal impact on state revenues and state expenditures. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes several changes relating to the clerks of courts.

Electronic Filings

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.¹ The clerk is also required to ensure that the papers do not leave the office without leave of court.² The statute does not address requirements to maintain electronic filings.

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

Clerk as County Recorder

The clerk of the circuit court generally acts as the county recorder.³ This bill amends s. 28.222, F.S., to add a new subsection (4) requiring the clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Public Records

A clerk of court is a custodian of public information and is thus required to provide access and copies of public records, if the requesting party is entitled by law to view the record.⁴ Certain records are exempt from disclosure, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.⁵ An individual whose information is exempt must file a written request for exemption with any agency that holds an exempt record.⁶

This bill amends s. 28.24, F.S., to specify "copy of a public record" when referencing a record held by a clerk means a facsimile, replica, photograph, or other reproduction of a record. The bill also amends s. 119.071(4)(d)2., F.S. of the public records law to require that a person who submits a written request to make information exempt from public disclosure must specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.⁷ If the amount of the overpayment is \$5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.⁸ This bill amends s. 24.244, F.S. to increase the minimum from \$5 to \$10.

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ Section 28.24, F.S.

⁵ Section 119.071(4)(d), F.S.

⁶ Section 119.071(4)(d)2., F.S.

⁷ Section 24.244, F.S.

⁸ *Id.*

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.⁹ State agencies are also exempt from all court-related fees and charges assessed by the clerks.¹⁰ This bill amends s. 28.345, F.S. by adding a new subsection (2), limiting the state agency exemption to the agency and the party it is representing. It is possible that this change may have other effects. See "Drafting Issues or Other Comments" herein.

Proof of Publication

Numerous statutes require the publication of legal notice for various actions.¹¹ Generally, proof of such publication is made by printed affidavit.¹² This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.¹³

Sale at Public Auction

A tax certificate is issued by a local government relating to unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges, issued in accordance with ch. 172, F.S., and against a specific parcel of real property.¹⁴ An unpaid tax certificate is a lien against the real property that can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificate holder will receive the amount of their investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5% mandatory minimum interest, whichever is greater.¹⁵ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹⁶

When property is sold by the clerk of court at a public auction, the certificate holder has the right to bid. The high bidder must post a nonrefundable deposit of 5% of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁷ If full payment of the final bid is not made within 24 hours, the clerk cancels all bids, readvertises the sale, and pays all costs of the sale from the deposit.¹⁸ Any remaining funds must be applied toward the opening bid.¹⁹

This bill amends s. 197.542(2), F.S., to provide that if the property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit. Upon receipt of a written request, the clerk must refund the cash deposit in accordance with s. 197.182(1)(c), F.S.

⁹ Section 28.345, F.S.

¹⁰ *Id.*

¹¹ *See, e.g.,* s. 50.011, F.S.

¹² Sections 50.031 and 50.041(1), F.S.

¹³ Section 117.021, F.S., requires that when a document is notarized electronically, it contains an electronic signature that is unique to the notary public, capable of independent verification, retained under the notary public's sole control, and attached to or logically associated with the electronic document.

¹⁴ Section 197.102(1)(f), F.S.

¹⁵ Section 197.472, F.S.

¹⁶ *Id.*

¹⁷ Section 197.542(2), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 28.13, F.S., relating to electronic filings.

Section 2 creates a new subsection (4) of s. 28.444, F.S., relating to removal of certain recorded court documents from the Official Records, and renumbers subsequent subsections.

Section 3 amends s. 28.24, F.S., relating to service charges.

Section 4 amends s. 28.244, F.S., relating to refunds by the clerk of the circuit court.

Section 5 amends s. 28.345, F.S., relating to exemption from court-related fees and charges.

Section 6 amends s. 50.041, F.S., relating to affidavits for proof of publication.

Section 7 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 8 amends s. 197.542, F.S., relating to sale at public auction.

Section 9 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Clerks of Court believe this bill may have an indeterminate positive impact on state revenues.

2. Expenditures:

The Clerks of Court believe this bill may have an indeterminate positive impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 61-62 appear to add an unnecessary cross-reference. Additionally, the change is covered by s. 28.345, F.S.

Line 69 appears to contain a drafting error in the phrase "copy of public a record."

The new provision that adds subsection (2) to s. 28.345, F.S., at line 270, appears to be worded in a way that might inadvertently eliminate all fee exemptions other than the state agency exemption.

Line 459 appears to contain a cross-reference error. Section 197.182(1)(c) requires the tax collector to automatically refund overpayments of taxes of more than \$10 *resulting from taxpayer error (emphasis added)*, if identified within a 4-year period of limitation. It is not clear that a purchaser of a property at a public auction is a taxpayer within the meaning of this statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to clerks of court; amending s. 28.13,
 3 F.S.; providing requirements for storage of electronic
 4 filings; requiring papers and electronic filings to be
 5 electronically time stamped; amending s. 28.222, F.S.;
 6 authorizing the clerk to remove sealed or expunged
 7 court records from the Official Records; amending s.
 8 28.24, F.S.; clarifying provisions concerning free
 9 copies of records to specified officials and their
 10 staffs; defining the term "copy of a public record"
 11 for specified purposes; amending s. 28.244, F.S.;
 12 increasing the threshold amount for automatic
 13 repayment of overpayments; amending s. 28.345, F.S.;
 14 clarifying the application of an exemption from
 15 payment of fees and charges assessed by clerks of
 16 circuit courts; amending s. 50.041, F.S.; authorizing
 17 the use of electronic proof of publication affidavits;
 18 amending s. 119.071, F.S.; requiring certain persons
 19 to provide specific information to the clerk to
 20 maintain the public records exemption status of
 21 certain information; amending s. 197.542, F.S.;
 22 authorizing the clerk to issue a refund to the
 23 depositor for redeemed property subject to a tax sale;
 24 providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:
 27

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

30 28.13 ~~To keep Papers and electronic filings.~~—The clerk of
 31 the circuit court shall keep all papers and electronic filings
 32 ~~filed~~ in the clerk's office with the utmost care and security,
 33 storing them in association with related case arranged in
 34 appropriate files and affixing a stamp to the submission
 35 indicating ~~(endorsing upon each~~ the date and time when the
 36 submission ~~same~~ was filed. The clerk ~~), and~~ shall not permit any
 37 attorney or other person to remove documents, ~~take papers~~ once
 38 filed, from the control or custody ~~out of the office~~ of the
 39 clerk without leave of the court, except as otherwise is
 40 ~~hereinafter~~ provided by law.

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

45 28.222 Clerk to be county recorder.—

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

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

51 28.24 ~~Service charges by clerk of the circuit court.~~—The
 52 clerk of the circuit court shall charge for services rendered by
 53 the clerk's office in recording documents and instruments and in
 54 performing the duties enumerated in amounts not to exceed those
 55 specified in this section. Notwithstanding any other provision

56 of this section, the clerk of the circuit court shall provide
 57 without charge to the state attorney, public defender, guardian
 58 ad litem, public guardian, attorney ad litem, criminal conflict
 59 and civil regional counsel, and private court-appointed counsel
 60 paid by the state, and to the authorized staff acting on behalf
 61 of each, access to and a copy of any public record as provided
 62 in s. 28.345, if the requesting party is entitled by law to view
 63 the exempt or confidential record, as maintained by and in the
 64 custody of the clerk of the circuit court as provided in general
 65 law and the Florida Rules of Judicial Administration. The clerk
 66 of the circuit court may provide the requested public record in
 67 an electronic format in lieu of a paper format when capable of
 68 being accessed by the requesting entity. For purposes of this
 69 section, the term "copy of public a record" means any facsimile,
 70 replica, photograph, or other reproduction of a record.

Charges

71
 72 (1) For examining, comparing, correcting, verifying, and
 73 certifying transcripts of record in appellate proceedings,
 74 prepared by attorney for appellant or someone else other than
 75 clerk, per page 5.00

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

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

80 (4) For verifying any instrument presented for
 81 certification prepared by someone other than clerk, per page
 82 3.50

83 (5)(a) For making copies by photographic process of any

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84 instrument in the public records consisting of pages of not more
 85 than 14 inches by 8 1/2 inches, per page 1.00
 86 (b) For making copies by photographic process of any
 87 instrument in the public records of more than 14 inches by 8 1/2
 88 inches, per page 5.00
 89 (6) For making microfilm copies of any public records:
 90 (a) 16 mm 100' microfilm roll 42.00
 91 (b) 35 mm 100' microfilm roll 60.00
 92 (c) Microfiche, per fiche 3.50
 93 (7) For copying any instrument in the public records by
 94 other than photographic process, per page 6.00
 95 (8) For writing any paper other than herein specifically
 96 mentioned, same as for copying, including signing and sealing
 97 7.00
 98 (9) For indexing each entry not recorded 1.00
 99 (10) For receiving money into the registry of court:
 100 (a)1. First \$500, percent 3
 101 2. Each subsequent \$100, percent 1.5
 102 (b) Eminent domain actions, per deposit 170.00
 103 (11) For examining, certifying, and recording plats and
 104 for recording condominium exhibits larger than 14 inches by 8
 105 1/2 inches:
 106 (a) First page 30.00
 107 (b) Each additional page 15.00
 108 (12) For recording, indexing, and filing any instrument
 109 not more than 14 inches by 8 1/2 inches, including required
 110 notice to property appraiser where applicable:
 111 (a) First page or fraction thereof 5.00

112 (b) Each additional page or fraction thereof 4.00

113 (c) For indexing instruments recorded in the official
 114 records which contain more than four names, per additional name
 115 1.00

116 (d) An additional service charge shall be paid to the
 117 clerk of the circuit court to be deposited in the Public Records
 118 Modernization Trust Fund for each instrument listed in s.
 119 28.222, except judgments received from the courts and notices of
 120 lis pendens, recorded in the official records:

- 121 1. First page 1.00
- 122 2. Each additional page 0.50

123

124 Said fund shall be held in trust by the clerk and used
 125 exclusively for equipment and maintenance of equipment,
 126 personnel training, and technical assistance in modernizing the
 127 public records system of the office. In a county where the duty
 128 of maintaining official records exists in an office other than
 129 the office of the clerk of the circuit court, the clerk of the
 130 circuit court is entitled to 25 percent of the moneys deposited
 131 into the trust fund for equipment, maintenance of equipment,
 132 training, and technical assistance in modernizing the system for
 133 storing records in the office of the clerk of the circuit court.
 134 The fund may not be used for the payment of travel expenses,
 135 membership dues, bank charges, staff-recruitment costs, salaries
 136 or benefits of employees, construction costs, general operating
 137 expenses, or other costs not directly related to obtaining and
 138 maintaining equipment for public records systems or for the
 139 purchase of furniture or office supplies and equipment not

140 related to the storage of records. On or before December 1,
 141 1995, and on or before December 1 of each year immediately
 142 preceding each year during which the trust fund is scheduled for
 143 legislative review under s. 19(f)(2), Art. III of the State
 144 Constitution, each clerk of the circuit court shall file a
 145 report on the Public Records Modernization Trust Fund with the
 146 President of the Senate and the Speaker of the House of
 147 Representatives. The report must itemize each expenditure made
 148 from the trust fund since the last report was filed; each
 149 obligation payable from the trust fund on that date; and the
 150 percentage of funds expended for each of the following:
 151 equipment, maintenance of equipment, personnel training, and
 152 technical assistance. The report must indicate the nature of the
 153 system each clerk uses to store, maintain, and retrieve public
 154 records and the degree to which the system has been upgraded
 155 since the creation of the trust fund.

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

161 1. If the counties maintain legal responsibility for the
 162 costs of the court-related technology needs as defined in s.
 163 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
 164 Florida Association of Court Clerks and Comptroller, Inc., for
 165 the cost of development, implementation, operation, and
 166 maintenance of the clerks' Comprehensive Case Information
 167 System, in which system all clerks shall participate on or

168 | before January 1, 2006; \$1.90 shall be retained by the clerk to
 169 | be deposited in the Public Records Modernization Trust Fund and
 170 | used exclusively for funding court-related technology needs of
 171 | the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall
 172 | be distributed to the board of county commissioners to be used
 173 | exclusively to fund court-related technology, and court
 174 | technology needs as defined in s. 29.008(1)(f)2. and (h) for the
 175 | state trial courts, state attorney, public defender, and
 176 | criminal conflict and civil regional counsel in that county. If
 177 | the counties maintain legal responsibility for the costs of the
 178 | court-related technology needs as defined in s. 29.008(1)(f)2.
 179 | and (h), notwithstanding any other provision of law, the county
 180 | is not required to provide additional funding beyond that
 181 | provided herein for the court-related technology needs of the
 182 | clerk as defined in s. 29.008(1)(f)2. and (h). All court records
 183 | and official records are the property of the State of Florida,
 184 | including any records generated as part of the Comprehensive
 185 | Case Information System funded pursuant to this paragraph and
 186 | the clerk of court is designated as the custodian of such
 187 | records, except in a county where the duty of maintaining
 188 | official records exists in a county office other than the clerk
 189 | of court or comptroller, such county office is designated the
 190 | custodian of all official records, and the clerk of court is
 191 | designated the custodian of all court records. The clerk of
 192 | court or any entity acting on behalf of the clerk of court,
 193 | including an association, shall not charge a fee to any agency
 194 | as defined in s. 119.011, the Legislature, or the State Court
 195 | System for copies of records generated by the Comprehensive Case

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196 Information System or held by the clerk of court or any entity
 197 acting on behalf of the clerk of court, including an
 198 association.

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

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

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

208 (15) For preparing affidavit of domicile 5.00

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

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

213 (18)(a) For issuing and filing a subpoena for a witness,
 214 not otherwise provided for herein (includes writing, preparing,
 215 signing, and sealing) 7.00

216 (b) For signing and sealing only 2.00

217 (19) For approving bond 8.50

218 (20) For searching of records, for each year's search 2.00

219 (21) For processing an application for a tax deed sale
 220 (includes application, sale, issuance, and preparation of tax
 221 deed, and disbursement of proceeds of sale), other than excess
 222 proceeds 60.00

223 (22) For disbursement of excess proceeds of tax deed sale,

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224 first \$100 or fraction thereof 10.00
 225 (23) Upon receipt of an application for a marriage
 226 license, for preparing and administering of oath; issuing,
 227 sealing, and recording of the marriage license; and providing a
 228 certified copy 30.00

229 (24) For solemnizing matrimony 30.00

230 (25) For sealing any court file or expungement of any
 231 record 42.00

232 (26) (a) For receiving and disbursing all restitution
 233 payments, per payment 3.50

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

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

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

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

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

249 28.244 Refunds.—A clerk of the circuit court or a filing
 250 officer of another office where records are filed who receives
 251 payment for services provided and thereafter determines that an

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252 overpayment has occurred shall refund to the person who made the
 253 payment the amount of any overpayment that exceeds \$10 ~~\$5~~. If
 254 the amount of the overpayment is \$10 ~~\$5~~ or less, the clerk of
 255 the circuit court or a filing officer of another office where
 256 records are filed is not required to refund the amount of the
 257 overpayment unless the person who made the overpayment makes a
 258 written request.

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

261 28.345 Exemption from court-related fees and charges.—

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

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

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

277 50.041 Proof of publication; uniform affidavits required.—

278 (2) Each such affidavit shall be printed upon white bond
 279 paper containing at least 25 percent rag material and shall be 8

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280 1/2 inches in width and of convenient length, not less than 5
 281 1/2 inches. A white margin of not less than 2 1/2 inches shall
 282 be left at the right side of each affidavit form and upon or in
 283 this space shall be substantially pasted a clipping which shall
 284 be a true copy of the public notice or legal advertisement for
 285 which proof is executed. Alternatively, each such affidavit may
 286 be provided in electronic rather than paper form, provided the
 287 notarization of the affidavit complies with the requirements of
 288 s. 117.021.

289 Section 7. Paragraph (d) of subsection (4) of section
 290 119.071, Florida Statutes, is amended to read:

291 119.071 General exemptions from inspection or copying of
 292 public records.—

293 (4) AGENCY PERSONNEL INFORMATION.—

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

308 facilities attended by the children of such personnel are exempt
 309 from s. 119.07(1).

310 b. The home addresses, telephone numbers, and photographs
 311 of firefighters certified in compliance with s. 633.35; the home
 312 addresses, telephone numbers, photographs, and places of
 313 employment of the spouses and children of such firefighters; and
 314 the names and locations of schools and day care facilities
 315 attended by the children of such firefighters are exempt from s.
 316 119.07(1).

317 c. The home addresses and telephone numbers of justices of
 318 the Supreme Court, district court of appeal judges, circuit
 319 court judges, and county court judges; the home addresses,
 320 telephone numbers, and places of employment of the spouses and
 321 children of justices and judges; and the names and locations of
 322 schools and day care facilities attended by the children of
 323 justices and judges are exempt from s. 119.07(1).

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

336 Constitution.

337 e. The home addresses and telephone numbers of general

338 magistrates, special magistrates, judges of compensation claims,

339 administrative law judges of the Division of Administrative

340 Hearings, and child support enforcement hearing officers; the

341 home addresses, telephone numbers, and places of employment of

342 the spouses and children of general magistrates, special

343 magistrates, judges of compensation claims, administrative law

344 judges of the Division of Administrative Hearings, and child

345 support enforcement hearing officers; and the names and

346 locations of schools and day care facilities attended by the

347 children of general magistrates, special magistrates, judges of

348 compensation claims, administrative law judges of the Division

349 of Administrative Hearings, and child support enforcement

350 hearing officers are exempt from s. 119.07(1) and s. 24(a), Art.

351 I of the State Constitution if the general magistrate, special

352 magistrate, judge of compensation claims, administrative law

353 judge of the Division of Administrative Hearings, or child

354 support hearing officer provides a written statement that the

355 general magistrate, special magistrate, judge of compensation

356 claims, administrative law judge of the Division of

357 Administrative Hearings, or child support hearing officer has

358 made reasonable efforts to protect such information from being

359 accessible through other means available to the public. This

360 sub-subparagraph is subject to the Open Government Sunset Review

361 Act in accordance with s. 119.15, and shall stand repealed on

362 October 2, 2013, unless reviewed and saved from repeal through

363 reenactment by the Legislature.

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

376 g. The home addresses, telephone numbers, and photographs
 377 of current or former code enforcement officers; the names, home
 378 addresses, telephone numbers, and places of employment of the
 379 spouses and children of such personnel; and the names and
 380 locations of schools and day care facilities attended by the
 381 children of such personnel are exempt from s. 119.07(1) and s.
 382 24(a), Art. I of the State Constitution.

383 h. The home addresses, telephone numbers, places of
 384 employment, and photographs of current or former guardians ad
 385 litem, as defined in s. 39.820; the names, home addresses,
 386 telephone numbers, and places of employment of the spouses and
 387 children of such persons; and the names and locations of schools
 388 and day care facilities attended by the children of such persons
 389 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 390 Constitution, if the guardian ad litem provides a written
 391 statement that the guardian ad litem has made reasonable efforts

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392 to protect such information from being accessible through other
 393 means available to the public. This sub-subparagraph is subject
 394 to the Open Government Sunset Review Act in accordance with s.
 395 119.15 and shall stand repealed on October 2, 2015, unless
 396 reviewed and saved from repeal through reenactment by the
 397 Legislature.

398 i. The home addresses, telephone numbers, and photographs
 399 of current or former juvenile probation officers, juvenile
 400 probation supervisors, detention superintendents, assistant
 401 detention superintendents, juvenile justice detention officers I
 402 and II, juvenile justice detention officer supervisors, juvenile
 403 justice residential officers, juvenile justice residential
 404 officer supervisors I and II, juvenile justice counselors,
 405 juvenile justice counselor supervisors, human services counselor
 406 administrators, senior human services counselor administrators,
 407 rehabilitation therapists, and social services counselors of the
 408 Department of Juvenile Justice; the names, home addresses,
 409 telephone numbers, and places of employment of spouses and
 410 children of such personnel; and the names and locations of
 411 schools and day care facilities attended by the children of such
 412 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 413 the State Constitution.

414 j. The home addresses, telephone numbers, and photographs
 415 of current or former public defenders, assistant public
 416 defenders, criminal conflict and civil regional counsel, and
 417 assistant criminal conflict and civil regional counsel; the home
 418 addresses, telephone numbers, and places of employment of the
 419 spouses and children of such defenders or counsel; and the names

420 and locations of schools and day care facilities attended by the
 421 children of such defenders or counsel are exempt from s.
 422 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 423 sub-subparagraph is subject to the Open Government Sunset Review
 424 Act in accordance with s. 119.15 and shall stand repealed on
 425 October 2, 2015, unless reviewed and saved from repeal through
 426 reenactment by the Legislature.

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

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

439 197.542 Sale at public auction.—

440 (2) The certificateholder has the right to bid as others
 441 present may bid, and the property shall be struck off and sold
 442 to the highest bidder. The high bidder shall post with the clerk
 443 a nonrefundable deposit of 5 percent of the bid or \$200,
 444 whichever is greater, at the time of the sale, to be applied to
 445 the sale price at the time of full payment. Notice of the
 446 deposit requirement must be posted at the auction site, and the
 447 clerk may require bidders to show their willingness and ability

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448 to post the deposit. If full payment of the final bid and of
449 documentary stamp tax and recording fees is not made within 24
450 hours, excluding weekends and legal holidays, the clerk shall
451 cancel all bids, readvertise the sale as provided in this
452 section, and pay all costs of the sale from the deposit. Any
453 remaining funds must be applied toward the opening bid. If the
454 property is redeemed prior to the clerk receiving full payment
455 for the issuance of a tax deed, in order to receive a refund of
456 the deposit described in this subsection, the high bidder must
457 submit a request for such refund in writing to the clerk. Upon
458 receipt of the refund request, the clerk shall refund the cash
459 deposit consistent with s. 197.182(1)(c). The clerk may refuse
460 to recognize the bid of any person who has previously bid and
461 refused, for any reason, to honor such bid.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 483 Uniform Commercial Code

SPONSOR(S): Passidomo

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond YTB
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners, a group of scholars and business representatives. The term "uniform" refers to how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that are uniform to one another.

Article 9 of the UCC governs secured transactions of personal property. In 1998, Article 9 was substantially revised and adopted by all states. In 2010, the Commission drafted and adopted amendments to Article 9. The 2010 amendments modify Article 9 to address filing issues and other matters that have arisen since the 1998 revision.

The bill adopts the 2010 amendment to Article 9. The most significant revision to statute includes changes to the provision governing the name of a debtor for purposes of filing a financing statement. The bill also provides the following changes to Article 9:

- Modifies certain definitions;
- Makes minor revisions to s. 679.301, F.S., relating to the location of debtors;
- Modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction;
- Provides rules for transition to the proposed version of Article 9; and
- Makes numerous stylistic and grammatical changes.

The effective date of the bill is July 1, 2013.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. "Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."¹

Participation in the Conference is not limited to lawyers since "stakeholder" meetings are held, where the opinions of all groups concerned with a particular area can be heard.² Every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida's assessment for 2009-2010 is \$96,700.³

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a "business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation."⁴ In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories except Puerto Rico where it is currently being considered. In 2010, the Commission drafted and adopted amendments to Article 9.

The 2010 Amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.⁵

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor.⁶ A security interest is a "property interest created by agreement or by operation of law to secure performance of an obligation" (i.e. payment of a debt).⁷ An individual or entity files a financial statement to notify third parties — typically prospective buyers and lenders — of a secured party's security interest in goods or real property. Financing statements are indexed under the name of the debtor; therefore, an individual looking for a specific financing statement will search for it under the debtor's name.

¹ <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=9>

² *2008 Commission Annual Report*, p.10, available online: http://www.nccusl.org/nccusl/docs/AnnReport_08_web.pdf

³ *2009 Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws, January 2010*, p. 4; the report was prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.

⁴ Black's Law Dictionary (9th ed. 2009).

⁵ [http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.nccusl.org/Act.aspx?title=UCC%20Article%209%20Amendments%20(2010)) (legislation has been introduced and is pending in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).

⁶ See *Matter of Glasco, Inc.*, 642 F.2d 793, 795 (5th Cir. 1981).

⁷ Black's Law Dictionary (9th ed. 2009).

Section 679.5031(1), F.S., explains what constitutes the debtor's name for purposes of a financing statement where the debtor is a registered organization,⁸ a decedent's estate, or a trust or trustee acting regarding property in trust.⁹ Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting regarding property in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

The bill revises standards regarding the name of a debtor to be provided on a financing statement. If the debtor is a registered organization, the financing statement sufficiently provides the name of the debtor where it lists the name of the registered organization provided on the most recent public organic record¹⁰ filed or issued by the registered organization's jurisdiction of organization. This also applies to a registered organization that holds collateral in trust.

Where the collateral is being administered by a personal representative of a decedent, the financing statement is sufficient if it provides the name of the decedent as the debtor and indicates that the collateral is being administered by a personal representative. The name of the decedent indicated on the order appointing the personal representative of the decedent, which was issued by a court having jurisdiction over the collateral, is sufficient as the name of the decedent.

If the collateral is held in a trust that is not a registered organization, the financing statement must indicate the name specified in the organic record of the trust and that the collateral is held in trust. If the organic record does not specify a name, the financing statement must indicate the name of the settlor or testator, additional information sufficient to distinguish the trust from other trusts that may have the same settlors or testator, and an indication that the collateral is held in a trust.

The bill also provides standards regarding the name of an individual debtor to be provided on a financing statement. If the debtor is an individual, the financing statement must provide the name on

⁸ Current law provides that a registered organization is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." Section 679.1021(1)(qqq), F.S. The bill revises the definition to include a business trust that is formed or organized in a state where the public organic record of a business trust must be filed with such state.

⁹ Section 679.5031(1), F.S.

¹⁰ The bill replaces all references to the "public record" with the "public organic record." It further creates a new definition for the term, as "public record" is not currently defined under the statute. The bill defines "public organic record" as:

[A] record that is available to the public for inspection and that is:

1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
3. A record consisting of legislation enacted by the legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

the debtor's driver's license if the license has not on its face expired. If the state has issued a non-driver's identification card in lieu of a driver's license, the name provided on the identification card may be used with the same effect as a driver's license name. If the state has issued to an individual more than one driver's license or more than one identification card, the most recent driver's license or identification card applies.

If the debtor does not have a driver's license or identification card, the financing statement must provide either the individual name of the debtor (i.e. whatever the debtor's name is under current law) or the debtor's surname and first personal name.

In other cases, if the debtor does not have a name, the financing statement must include the name of partners, members, associates, or others comprising the debtor. The names must be provided in a manner so that each name provided would be sufficient if the person named was the debtor.

The bill also defines the term "name of the settlor or testator" as follows:

- If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued by the registered organization's jurisdiction of organization; or
- In other cases, the name of the settlor or testator indicated in the trust's organic record.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized.¹¹ While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed.

The bill revises current law in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the bill authorizes the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. It is important to note that the secured party has no duty to file an information statement, even if it is aware of the unauthorized filing.

Perfection of Security Interests

"Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it."¹² Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction.¹³ Generally, a security interest perfected according to another jurisdiction, or state's law is not automatically "unperfected." Current law provides that a security interest perfected by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction.

The bill provides the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

¹¹ Section 679.518, F.S.

¹² *Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union*, 738 So. 2d 456, 458 (Fla. 1st DCA 1999).

¹³ Section 679.3161, F.S.

The bill also provides various minor and stylistic changes to provisions affecting perfection of security interests.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. "Chattel paper" is a record or records that show both a monetary obligation and a security interest in specific goods.¹⁴ "Electronic chattel paper" is "chattel paper evidenced by record or records consisting of information stored in an electronic medium."¹⁵ Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.¹⁶

The bill provides a general test for establishing when a secured party has control of electronic chattel paper. Specifically, a party has control of electronic chattel paper "if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned." The bill also provides a safe harbor test that if satisfied, establishes control under the aforementioned general test. The safe harbor test is consistent with the original six requirements in current law.

Other Changes

The bill also makes the following changes to Article 9:

- Modifies the definitions of the terms "authenticate," "certificate of title," and "registered organization;" and creates a definition for "public organic record."
- Makes minor revisions to s. 679.301, F.S., relating to the location of debtors;
- Makes minor revisions to provisions governing priority of security interests;
- Makes minor revisions to provisions relating to the information that must be included in a financing statement;
- Provides additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables;
- Provides various clarifying and conforming revisions to current law, and provides rules for transition to the proposed version of Article 9.
- Makes numerous stylistic and grammatical changes.

B. SECTION DIRECTORY:

Section 1 amends s. 679.1021, F.S., to provide definitions.

Section 2 amends s. 679.1051, F.S., relating to control of electronic chattel paper.

Section 3 amends s. 679.3071, F.S., relating to the location of the debtor.

Section 4 amends s. 679.3111, F.S., relating to the perfection of security interests in property subject to certain statutes, regulations, and treaties.

Section 5 amends 679.3161, F.S., relating to perfection of security interests following a change in governing law.

Section 6 amends s. 679.3171, F.S., relating to interests that take propriety over or take free of security interest or agricultural lien.

Section 7 amends s. 679.326, F.S., to provide priority of security interests created by new debtor.

¹⁴ Section 679.1021(1)(k), F.S.

¹⁵ Section 679.1021(1)(ee), F.S.

¹⁶ See s. 679.1051, F.S.

Section 8 amends s. 679.4061, F.S., relating to discharge of account debtor.

Section 9 amends s. 679.4081, F.S., relating to restrictions on assignment of promissory notes.

Section 10 amends s. 679.5021, F.S., relating to the contents of a financing statement.

Section 11 amends s. 679.5031, F.S., to provide guidelines for sufficiency of debtor name on financing statement.

Section 12 amends s. 67.5071, F.S., relating to the effect of certain events on effectiveness of financing statement.

Section 13 amends s. 679.515, F.S., relating to the duration and effectiveness of financing statement.

Section 14 amends s. 679.516, F.S., to provide what constitutes filing.

Section 15 amends s. 679.518, F.S., relating to inaccurate or wrongly filed record.

Section 16 amends s. 679.607 relating to collection and enforcement by secured party.

Section 17 creates ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, F.S., to provide guidelines for transition.

Section 18 amends s. 680.1031, F.S., to provide a definition.

Section 19 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of the bill is July 1, 2013. This is consistent with the Commission's proposed amendments to Article 9. According to the Commission, the 2013 effective date is intended to allow states to adopt the amendments uniformly so the Article 9 revisions will become operative simultaneously thereby avoiding confusion with respect to interstate transactions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to the Uniform Commercial Code;
 3 revising and providing provisions of the Uniform
 4 Commercial Code relating to secured transactions to
 5 conform to the revised Article 9 of the Uniform
 6 Commercial Code as prepared by the National Conference
 7 of Commissioners on Uniform State Laws; amending s.
 8 679.1021, F.S.; revising and providing definitions;
 9 amending s. 679.1051, F.S.; revising provisions
 10 relating to control of electronic chattel paper;
 11 amending s. 679.3071, F.S.; revising provisions
 12 relating to the location of debtors; amending s.
 13 679.3111, F.S.; making editorial changes; amending s.
 14 679.3161, F.S.; providing rules that apply to certain
 15 collateral to which a security interest attaches;
 16 providing rules relating to certain financing
 17 statements; amending s. 679.3171, F.S.; revising
 18 provisions relating to interests that take priority
 19 over or take free of a security interest or
 20 agricultural lien; amending s. 679.326, F.S.; revising
 21 priority of security interests created by a new
 22 debtor; amending ss. 679.4061 and 679.4081, F.S.;
 23 revising application; amending s. 679.5021, F.S.;
 24 revising when a record of a mortgage satisfying the
 25 requirements of chapter 697 is effective as a filing
 26 statement; amending s. 679.5031, F.S.; revising when a
 27 financing statement sufficiently provides the name of
 28 the debtor; amending s. 679.5071, F.S.; revising the

29 effect of certain events on the effectiveness of a
 30 financing statement; amending s. 679.515, F.S.;
 31 revising the duration and effectiveness of a financing
 32 statement; amending s. 679.516, F.S.; revising
 33 instances when filing does not occur with respect to a
 34 record that a filing office refuses to accept;
 35 amending s. 679.518, F.S.; revising requirements for
 36 claims concerning an inaccurate or wrongfully filed
 37 record; amending s. 679.607, F.S.; revising recording
 38 requirements for the enforcement of mortgages
 39 nonjudicially outside this state; creating part VIII
 40 of chapter 679, F.S., relating to transition from
 41 prior law under the chapter to law under the chapter
 42 as amended by this act; creating s. 679.801, F.S.;
 43 providing scope of application and limitations;
 44 creating s. 679.802, F.S.; providing that security
 45 interests perfected under prior law that also satisfy
 46 the requirements for perfection under this act remain
 47 effective; creating s. 679.803, F.S.; providing that
 48 security interests unperfected under prior law but
 49 that satisfy the requirements for perfection under
 50 this act will become effective July 1, 2013; creating
 51 s. 679.804, F.S.; providing when financing statements
 52 effective under prior law in a different jurisdiction
 53 remain effective; creating s. 679.805, F.S.; requiring
 54 the recording of a financing statement in lieu of a
 55 continuation statement under certain conditions;
 56 providing for the continuation of the effectiveness of

57 a financing statement filed before the effective date
 58 of this act under certain conditions; creating s.
 59 679.806, F.S.; providing requirements for the
 60 amendment of financing statements filed before the
 61 effective date of this act; providing requirements for
 62 financing statements prior to amendment; creating s.
 63 679.807, F.S.; providing person entitled to file
 64 initial financing statement or continuation statement;
 65 creating s. 679.808, F.S.; providing priority of
 66 conflicting claims to collateral; amending s.
 67 680.1031, F.S.; conforming a cross-reference;
 68 providing an effective date.

69
 70 Be It Enacted by the Legislature of the State of Florida:

71
 72 Section 1. Paragraphs (ooo) through (aaaa) of subsection
 73 (1) of section 679.1021, Florida Statutes, are redesignated as
 74 paragraphs (ppp) through (bbbb), respectively, a new paragraph
 75 (ooo) is added to that subsection, and present paragraphs (g),
 76 (j), (xx), and (qqq) of subsection (1) of that section are
 77 amended to read:

78 679.1021 Definitions and index of definitions.—

79 (1) In this chapter, the term:

80 (g) "Authenticate" means:

81 1. To sign; or

82 2. ~~To execute or otherwise adopt a symbol, or encrypt or~~
 83 ~~similarly process a record in whole or in part, With the present~~
 84 ~~intent of the authenticating person to identify the person and~~

85 | adopt or accept a record, to attach to or logically associate
 86 | with the record an electronic sound, symbol, or process.

87 | (j) "Certificate of title" means a certificate of title
 88 | with respect to which a statute provides for the security
 89 | interest in question to be indicated on the certificate as a
 90 | condition or result of the security interest's obtaining
 91 | priority over the rights of a lien creditor with respect to the
 92 | collateral. The term includes another record maintained as an
 93 | alternative to a certificate of title by the governmental unit
 94 | that issues certificates of title if a statute permits the
 95 | security interest in question to be indicated on the record as a
 96 | condition or result of the security interest's obtaining
 97 | priority over the rights of a lien creditor with respect to the
 98 | collateral.

99 | (xx) "Jurisdiction of organization," with respect to a
 100 | registered organization, means the jurisdiction under whose law
 101 | the organization is formed or organized.

102 | (ooo) "Public organic record" means a record that is
 103 | available to the public for inspection and that is:

104 | 1. A record consisting of the record initially filed with
 105 | or issued by a state or the United States to form or organize an
 106 | organization and any record filed with or issued by the state or
 107 | the United States that amends or restates the initial record;

108 | 2. An organic record of a business trust consisting of the
 109 | record initially filed with a state and any record filed with
 110 | the state that amends or restates the initial record, if a
 111 | statute of the state governing business trusts requires that the
 112 | record be filed with the state; or

113 3. A record consisting of legislation enacted by the
 114 Legislature of a state or the Congress of the United States that
 115 forms or organizes an organization, any record amending the
 116 legislation, and any record filed with or issued by the state or
 117 the United States that amends or restates the name of the
 118 organization.

119 ~~(rrr)-(ccc)~~ "Registered organization" means an organization
 120 formed or organized solely under the law of a single state or
 121 the United States by the filing of a public organic record with,
 122 the issuance of a public organic record by, or the enactment of
 123 legislation by and as to which the state or the United States
 124 must maintain a public record showing the organization to have
 125 been organized. The term includes a business trust that is
 126 formed or organized under the law of a single state if a statute
 127 of the state governing business trusts requires that the
 128 business trust's organic record be filed with the state.

129 Section 2. Section 679.1051, Florida Statutes, is amended
 130 to read:

131 679.1051 Control of electronic chattel paper.—

132 (1) A secured party has control of electronic chattel
 133 paper if a system employed for evidencing the transfer of
 134 interests in the chattel paper reliably establishes the secured
 135 party as the person to which the chattel paper was assigned.

136 (2) A system satisfies subsection (1), and a secured party
 137 has control of electronic chattel paper, if the record or
 138 records comprising the chattel paper are created, stored, and
 139 assigned in such a manner that:

140 (a)-~~(1)~~ A single authoritative copy of the record or

141 records exists which is unique, identifiable and, except as
 142 otherwise provided in paragraphs (d), (e), and (f) subsections
 143 ~~(4), (5), and (6)~~, unalterable;

144 (b)~~(2)~~ The authoritative copy identifies the secured party
 145 as the assignee of the record or records;

146 (c)~~(3)~~ The authoritative copy is communicated to and
 147 maintained by the secured party or its designated custodian;

148 (d)~~(4)~~ Copies or amendments ~~revisions~~ that add or change
 149 an identified assignee of the authoritative copy can be made
 150 only with the consent ~~participation~~ of the secured party;

151 (e)~~(5)~~ Each copy of the authoritative copy and any copy of
 152 a copy is readily identifiable as a copy that is not the
 153 authoritative copy; and

154 (f)~~(6)~~ Any amendment ~~revision~~ of the authoritative copy is
 155 readily identifiable as an authorized or unauthorized ~~revision~~.

156 Section 3. Subsection (6) of section 679.3071, Florida
 157 Statutes, is amended to read:

158 679.3071 Location of debtor.—

159 (6) Except as otherwise provided in subsection (9), a
 160 registered organization that is organized under the law of the
 161 United States and a branch or agency of a bank that is not
 162 organized under the law of the United States or a state are
 163 located:

164 (a) In the state that the law of the United States
 165 designates, if the law designates a state of location;

166 (b) In the state that the registered organization, branch,
 167 or agency designates, if the law of the United States authorizes
 168 the registered organization, branch, or agency to designate its

169 state of location, including by designating its main office,
 170 home office, or other comparable office; or

171 (c) In the District of Columbia, if neither paragraph (a)
 172 nor paragraph (b) applies.

173 Section 4. Paragraph (c) of subsection (1) of section
 174 679.3111, Florida Statutes, is amended to read:

175 679.3111 Perfection of security interests in property
 176 subject to certain statutes, regulations, and treaties.—

177 (1) Except as otherwise provided in subsection (4), the
 178 filing of a financing statement is not necessary or effective to
 179 perfect a security interest in property subject to:

180 (c) A ~~certificate of title~~ statute of another jurisdiction
 181 which provides for a security interest to be indicated on a the
 182 certificate of title as a condition or result of the security
 183 interest's obtaining priority over the rights of a lien creditor
 184 with respect to the property.

185 Section 5. Subsections (8) and (9) are added to section
 186 679.3161, Florida Statutes, to read:

187 679.3161 ~~Effect Continued perfection of security interest~~
 188 ~~following~~ change in governing law.—

189 (8) The following rules apply to collateral to which a
 190 security interest attaches within 4 months after the debtor
 191 changes its location to another jurisdiction:

192 (a) A financing statement filed before the change of the
 193 debtor's location pursuant to the law of the jurisdiction
 194 designated in s. 679.3011(1) or s. 679.3051(3) is effective to
 195 perfect a security interest in the collateral if the financing
 196 statement would have been effective to perfect a security

197 interest in the collateral if the debtor had not changed its
 198 location.

199 (b) If a security interest that is perfected by a
 200 financing statement that is effective under subsection (1)
 201 becomes perfected under the law of the other jurisdiction before
 202 the earlier of the time the financing statement would have
 203 become ineffective under the law of the jurisdiction designated
 204 in s. 679.3011(1) or s. 679.3051(3) or the expiration of the 4-
 205 month period, it remains perfected thereafter. If the security
 206 interest does not become perfected under the law of the other
 207 jurisdiction before the earlier time or event, it becomes
 208 unperfected and is deemed never to have been perfected as
 209 against a purchaser of the collateral for value.

210 (9) If a financing statement naming an original debtor is
 211 filed pursuant to the law of the jurisdiction designated in s.
 212 679.3011(1) or s. 679.3051(3) and the new debtor is located in
 213 another jurisdiction, the following rules apply:

214 (a) The financing statement is effective to perfect a
 215 security interest in collateral in which the new debtor has or
 216 acquires rights before or within 4 months after the new debtor
 217 becomes bound under s. 679.2031(4), if the financing statement
 218 would have been effective to perfect a security interest in the
 219 collateral if the collateral had been acquired by the original
 220 debtor.

221 (b) A security interest that is perfected by the financing
 222 statement and that becomes perfected under the law of the other
 223 jurisdiction before the earlier of the expiration of the 4-month
 224 period or the time the financing statement would have become

225 ineffective under the law of the jurisdiction designated in s.
 226 679.3011(1) or s. 679.3051(3) remains perfected thereafter. A
 227 security interest that is perfected by the financing statement
 228 but that does not become perfected under the law of the other
 229 jurisdiction before the earlier time or event becomes
 230 unperfected and is deemed never to have been perfected as
 231 against a purchaser of the collateral for value.

232 Section 6. Subsections (2) and (4) of section 679.3171,
 233 Florida Statutes, are amended to read:

234 679.3171 Interests that take priority over or take free of
 235 security interest or agricultural lien.—

236 (2) Except as otherwise provided in subsection (5), a
 237 buyer, other than a secured party, of tangible chattel paper,
 238 tangible documents, goods, instruments, or a certificated
 239 security ~~certificate~~ takes free of a security interest or
 240 agricultural lien if the buyer gives value and receives delivery
 241 of the collateral without knowledge of the security interest or
 242 agricultural lien and before it is perfected.

243 (4) A licensee of a general intangible or a buyer, other
 244 than a secured party, of collateral accounts, electronic chattel
 245 paper, electronic documents, general intangibles, or investment
 246 property other than tangible chattel paper, tangible documents,
 247 goods, instruments, or a certificated security takes free of a
 248 security interest if the licensee or buyer gives value without
 249 knowledge of the security interest and before it is perfected.

250 Section 7. Section 679.326, Florida Statutes, is amended
 251 to read:

252 679.326 Priority of security interests created by new

253 debtor.—

254 (1) Subject to subsection (2), a security interest that is
 255 created by a new debtor in collateral in which the new debtor
 256 has or acquires rights and ~~which is~~ perfected by a filed
 257 financing statement that would be ineffective to perfect the
 258 security interest but for the application of s. 679.508 or ss.
 259 679.508 and 679.3161(9) (a) ~~is effective solely under s. 679.508~~
 260 ~~in collateral in which a new debtor has or acquires rights is~~
 261 subordinate to a security interest in the same collateral which
 262 is perfected other than by such a filed financing statement ~~that~~
 263 ~~is effective solely under s. 679.508.~~

264 (2) The other provisions of this part determine the
 265 priority among conflicting security interests in the same
 266 collateral perfected by filed financing statements described in
 267 subsection (1) ~~that are effective solely under s. 679.508.~~
 268 However, if the security agreements to which a new debtor became
 269 bound as debtor were not entered into by the same original
 270 debtor, the conflicting security interests rank according to
 271 priority in time of the new debtor's having become bound.

272 Section 8. Subsection (5) of section 679.4061, Florida
 273 Statutes, is amended to read:

274 679.4061 Discharge of account debtor; notification of
 275 assignment; identification and proof of assignment; restrictions
 276 on assignment of accounts, chattel paper, payment intangibles,
 277 and promissory notes ineffective.—

278 (5) Subsection (4) does not apply to the sale of a payment
 279 intangible or promissory note, other than a sale pursuant to a
 280 disposition under s. 679.610 or an acceptance of collateral

281 under s. 679.620.

282 Section 9. Subsection (2) of section 679.4081, Florida
 283 Statutes, is amended to read:

284 679.4081 Restrictions on assignment of promissory notes,
 285 health-care-insurance receivables, and certain general
 286 intangibles ineffective.—

287 (2) Subsection (1) applies to a security interest in a
 288 payment intangible or promissory note only if the security
 289 interest arises out of a sale of the payment intangible or
 290 promissory note, other than a sale pursuant to a disposition
 291 under s. 679.610 or an acceptance of collateral under s.
 292 679.620.

293 Section 10. Subsection (3) of section 679.5021, Florida
 294 Statutes, is amended to read:

295 679.5021 Contents of financing statement; record of
 296 mortgage as financing statement; time of filing financing
 297 statement.—

298 (3) A record of a mortgage satisfying the requirements of
 299 chapter 697 is effective, from the date of recording, as a
 300 financing statement filed as a fixture filing or as a financing
 301 statement covering as-extracted collateral or timber to be cut
 302 only if:

303 (a) The record of a mortgage indicates the goods or
 304 accounts that it covers;

305 (b) The goods are or are to become fixtures related to the
 306 real property described in the record of a mortgage or the
 307 collateral is related to the real property described in the
 308 mortgage and is as-extracted collateral or timber to be cut;

309 (c) The record satisfies ~~of a mortgage complies with~~ the
 310 requirements for a financing statement in this section,
 311 although:

312 1. The record need not indicate ~~other than an indication~~
 313 that it is to be filed in the real property records; and

314 2. The record sufficiently provides the name of a debtor
 315 who is an individual if it provides the individual name of the
 316 debtor or the surname and first personal name of the debtor,
 317 even if the debtor is an individual to whom s. 679.5031(1)(d) or
 318 (e) applies; and

319 (d) The record of a mortgage is recorded as required by
 320 chapter 697.

321 Section 11. Subsections (1) and (2) of section 679.5031,
 322 Florida Statutes, are amended, and subsections (6), (7), and (8)
 323 are added to that section, to read:

324 679.5031 Name of debtor and secured party.—

325 (1) A financing statement sufficiently provides the name
 326 of the debtor:

327 (a) Except as otherwise provided in paragraph (c), if the
 328 debtor is a registered organization or the collateral is held in
 329 a trust that is a registered organization, only if the financing
 330 statement provides the name that is stated to be the registered
 331 organization's name ~~of the debtor indicated~~ on the public
 332 organic record most recently filed with or issued or enacted by
 333 ~~of the~~ registered organization's ~~debtor's~~ jurisdiction of
 334 organization that purports to state, amend, or restate the
 335 registered organization's name ~~which shows the debtor to have~~
 336 ~~been organized;~~

337 (b) Subject to subsection (6), if the collateral is being
 338 administered by the personal representative of a decedent debtor
 339 ~~is a decedent's estate,~~ only if the financing statement
 340 provides, as the name of the debtor, the name of the decedent
 341 and, in a separate part of the financing statement, indicates
 342 that the collateral is being administered by a personal
 343 representative debtor is an estate;

344 (c) If the collateral debtor is held in a trust that is
 345 not a registered organization ~~or a trustee acting with respect~~
 346 ~~to property held in trust,~~ only if the financing statement:

347 1. Provides, as the name of the debtor:

348 a. If the organic record of the trust specifies a name, if
 349 ~~any, specified for the trust, the in its organic documents or,~~
 350 ~~if no name so is specified; or~~

351 b. If the organic record of the trust does not specify a
 352 name for the trust, provides the name of the settlor or testator
 353 ~~and additional information sufficient to distinguish a debtor~~
 354 ~~from other trusts having one or more of the same settlors; and~~

355 2. In a separate part of the financing statement:

356 a. If the name is provided in accordance with sub-
 357 subparagraph 1.a., indicates, in the debtor's name or otherwise,
 358 that the collateral debtor is held in a trust ~~or is a trustee~~
 359 ~~acting with respect to property held in trust; or~~

360 b. If the name is provided in accordance with sub-
 361 subparagraph 1.b., provides additional information sufficient to
 362 distinguish the trust from other trusts having one or more of
 363 the same settlors or the same testator and indicates that the
 364 collateral is held in a trust, unless the additional information

365 so indicates;

366 (d) Subject to subsection (7), if the debtor is an
 367 individual to whom this state has issued a driver license that
 368 has not expired or to whom the agency of this state that issues
 369 driver licenses has issued, in lieu of a driver license, a
 370 personal identification card that has not expired, only if the
 371 financing statement provides the name of the individual that is
 372 indicated on the driver license or personal identification card;

373 (e) If the debtor is an individual to whom paragraph (d)
 374 does not apply, only if the financing statement provides the
 375 individual name of the debtor or the surname and first personal
 376 name of the debtor; and

377 (f)-(d) In other cases:

378 1. If the debtor has a name, only if it provides the
 379 ~~individual or~~ organizational name of the debtor; and

380 2. If the debtor does not have a name, only if it provides
 381 the names of the partners, members, associates, or other persons
 382 comprising the debtor, in a manner that each name provided would
 383 be sufficient if the person named were the debtor.

384 (2) A financing statement that provides the name of the
 385 debtor in accordance with subsection (1) is not rendered
 386 ineffective by the absence of:

387 (a) A trade name or other name of the debtor; or

388 (b) Unless required under subparagraph (1)(f)2. ~~(1)(d)2.~~,
 389 names of partners, members, associates, or other persons
 390 comprising the debtor.

391 (6) The name of the decedent indicated on the order
 392 appointing the personal representative of the decedent issued by

393 the court having jurisdiction over the collateral is sufficient
 394 as the name of the decedent under paragraph (1)(b).

395 (7) If this state has issued to an individual more than
 396 one driver license or, if none, more than one identification
 397 card, of a kind described in paragraph (1)(d), the driver
 398 license or identification card, as applicable, that was issued
 399 most recently is the one to which paragraph (1)(d) refers.

400 (8) As used in this section, the term "name of the settlor
 401 or testator" means:

402 (a) If the settlor is a registered organization, the name
 403 of the registered organization indicated on the public organic
 404 record filed with or issued or enacted by the registered
 405 organization's jurisdiction of organization; or

406 (b) In other cases, the name of the settlor or testator
 407 indicated in the trust's organic record.

408 Section 12. Subsection (3) of section 679.5071, Florida
 409 Statutes, is amended to read:

410 679.5071 Effect of certain events on effectiveness of
 411 financing statement.—

412 (3) If the a debtor so changes its name that a filed
 413 financing statement provides for a debtor becomes insufficient
 414 as the name of the debtor under s. 679.5031(1) so that the
 415 financing statement becomes seriously misleading under the
 416 standard set forth in s. 679.5061:

417 (a) The financing statement is effective to perfect a
 418 security interest in collateral acquired by the debtor before,
 419 or within 4 months after, the filed financing statement becomes
 420 seriously misleading ~~change~~; and

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421 (b) The financing statement is not effective to perfect a
 422 security interest in collateral acquired by the debtor more than
 423 4 months after the filed financing statement becomes seriously
 424 misleading ~~change~~, unless an amendment to the financing
 425 statement which renders the financing statement not seriously
 426 misleading is filed within 4 months after that event ~~the change~~.

427 Section 13. Subsection (6) of section 679.515, Florida
 428 Statutes, is amended to read:

429 679.515 Duration and effectiveness of financing statement;
 430 effect of lapsed financing statement.—

431 (6) If a debtor is a transmitting utility and a filed
 432 initial financing statement so indicates, the financing
 433 statement is effective until a termination statement is filed.

434 Section 14. Subsection (2) of section 679.516, Florida
 435 Statutes, is amended to read:

436 679.516 What constitutes filing; effectiveness of filing.—

437 (2) Filing does not occur with respect to a record that a
 438 filing office refuses to accept because:

439 (a) The record is not communicated by a method or medium
 440 of communication authorized by the filing office;

441 (b) An amount equal to or greater than the applicable
 442 processing fee is not tendered;

443 (c) The filing office is unable to index the record
 444 because:

445 1. In the case of an initial financing statement, the
 446 record does not provide an organization's name or, if an
 447 individual, the individual's last name and first name;

448 2. In the case of an amendment or information ~~correction~~

449 statement, the record:

450 a. Does not correctly identify the initial financing
 451 statement as required by s. 679.512 or s. 679.518, as
 452 applicable; or

453 b. Identifies an initial financing statement the
 454 effectiveness of which has lapsed under s. 679.515;

455 3. In the case of an initial financing statement that
 456 provides the name of a debtor identified as an individual or an
 457 amendment that provides a name of a debtor identified as an
 458 individual which was not previously provided in the financing
 459 statement to which the record relates, the record does not
 460 identify the debtor's surname ~~last name~~ and first name; or

461 4. In the case of a record filed or recorded in the filing
 462 office described in s. 679.5011(1)(a), the record does not
 463 provide a sufficient description of the real property to which
 464 it relates;

465 (d) In the case of an initial financing statement or an
 466 amendment that adds a secured party of record, the record does
 467 not provide an organization's name or, if an individual, the
 468 individual's last name and first name and mailing address for
 469 the secured party of record;

470 (e) In the case of an initial financing statement or an
 471 amendment that provides a name of a debtor which was not
 472 previously provided in the financing statement to which the
 473 amendment relates, the record does not:

474 1. Provide a mailing address for the debtor;

475 2. Indicate whether the debtor is an individual or an
 476 organization; or

477 3. If the financing statement indicates that the debtor is
 478 an organization, provide:

- 479 a. A type of organization for the debtor;
- 480 b. A jurisdiction of organization for the debtor; or
- 481 c. An organizational identification number for the debtor
 482 or indicate that the debtor has none;

483 (f) In the case of an assignment reflected in an initial
 484 financing statement under s. 679.514(1) or an amendment filed
 485 under s. 679.514(2), the record does not provide an
 486 organization's name or, if an individual, the individual's last
 487 name and first name and mailing address for the assignee;

488 (g) In the case of a continuation statement, the record is
 489 not filed within the 6-month period prescribed by s. 679.515(4);

490 (h) In the case of an initial financing statement or an
 491 amendment, which amendment requires the inclusion of a
 492 collateral statement but the record does not provide any, the
 493 record does not provide a statement of collateral; or

494 (i) The record does not include the notation required by
 495 s. 201.22 indicating that the excise tax required by chapter 201
 496 had been paid or is not required.

497 Section 15. Section 679.518, Florida Statutes, is amended
 498 to read:

499 679.518 Claim concerning inaccurate or wrongfully filed
 500 record.—

501 (1) A person may file in the filing office an information
 502 ~~a correction~~ statement with respect to a record indexed there
 503 under the person's name if the person believes that the record
 504 is inaccurate or was wrongfully filed.

505 (2) An information ~~A correction~~ statement must:

506 (a) Identify the record to which it relates by the file

507 number assigned to the initial financing statement, the debtor,

508 and the secured party of record to which the record relates;

509 (b) Indicate that it is an information ~~a correction~~

510 statement; and

511 (c) Provide the basis for the person's belief that the

512 record is inaccurate and indicate the manner in which the person

513 believes the record should be amended to cure any inaccuracy or

514 provide the basis for the person's belief that the record was

515 wrongfully filed.

516 (3) The filing of an information ~~a correction~~ statement

517 does not affect the effectiveness of an initial financing

518 statement or other filed record.

519 (4) A person may file in the filing office an information

520 statement with respect to a record filed there if the person is

521 a secured party of record with respect to the financing

522 statement to which the record relates and believes that the

523 person that filed the record was not entitled to do so under s.

524 679.509(3).

525 (5) An information statement under subsection (4) must:

526 (a) Identify the record to which it relates by file number

527 assigned to the initial financing statement to which the record

528 relates;

529 (b) Indicate that it is an information statement; and

530 (c) Provide the basis for the person's belief that the

531 record is inaccurate and indicate the manner in which the person

532 believes the record should be amended to cure any inaccuracy or

533 provide the basis for the person's belief that the record was
 534 wrongfully filed.

535 Section 16. Subsection (2) of section 679.607, Florida
 536 Statutes, is amended to read:

537 679.607 Collection and enforcement by secured party.—

538 (2) If necessary to enable a secured party to exercise
 539 under paragraph (1)(c) the right of a debtor to enforce a
 540 mortgage nonjudicially outside this state, the secured party may
 541 record in the office in which a record of the mortgage is
 542 recorded:

543 (a) A copy of the security agreement that creates or
 544 provides for a security interest in the obligation secured by
 545 the mortgage; and

546 (b) The secured party's sworn affidavit in recordable form
 547 stating that:

548 1. A default has occurred with respect to the obligation
 549 secured by the mortgage; and

550 2. The secured party is entitled to enforce the mortgage
 551 nonjudicially outside this state.

552 Section 17. Part VIII of chapter 679, Florida Statutes,
 553 consisting of sections 679.801, 679.802, 679.803, 679.804,
 554 679.805, 679.806, 679.807, and 679.808, Florida Statutes, is
 555 created to read:

556 679.801 Saving clause.—

557 (1) Except as otherwise provided in this part, this part
 558 applies to a transaction or lien within its scope, even if the
 559 transaction or lien was entered into or created before July 1,
 560 2013.

561 (2) The amendments to this chapter by this act do not
 562 affect an action, case, or proceeding commenced before July 1,
 563 2013.

564 679.802 Security interest perfected before effective
 565 date.—

566 (1) A security interest that is a perfected security
 567 interest immediately before July 1, 2013, is a perfected
 568 security interest under this chapter, as amended by this act, on
 569 July 1, 2013, if the applicable requirements for attachment and
 570 perfection under this chapter, as amended by this act, are
 571 satisfied without further action.

572 (2) Except as otherwise provided in s. 679.804, if a
 573 security interest is a perfected security interest immediately
 574 before July 1, 2013, but the applicable requirements for
 575 perfection under this chapter, as amended by this act, are not
 576 satisfied on July 1, 2013, the security interest remains
 577 perfected thereafter only if the applicable requirements for
 578 perfection under this chapter, as amended by this act, are
 579 satisfied no later than July 1, 2014.

580 679.803 Security interest unperfected before effective
 581 date.—A security interest that is an unperfected security
 582 interest immediately before July 1, 2013, becomes a perfected
 583 security interest:

584 (1) Without further action, on July 1, 2013, if the
 585 applicable requirements for perfection under this chapter, as
 586 amended by this act, are satisfied before or at that time; or

587 (2) When the applicable requirements for perfection are
 588 satisfied if the requirements are satisfied after that time.

589 679.804 Effectiveness of action taken before effective
 590 date.—

591 (1) The filing of a financing statement before July 1,
 592 2013, is effective to perfect a security interest to the extent
 593 the filing would satisfy the applicable requirements for
 594 perfection under this chapter, as amended by this act.

595 (2) The amendments to this chapter by this act do not
 596 render ineffective an effective financing statement that was
 597 filed before July 1, 2013, and satisfies the applicable
 598 requirements for perfection under the law of the jurisdiction
 599 governing perfection as provided in this chapter as it existed
 600 before July 1, 2013. However, except as otherwise provided in
 601 subsections (3) and (4) and s. 679.805, the financing statement
 602 ceases to be effective:

603 (a) If the financing statement is filed in this state, at
 604 the time the financing statement would have ceased to be
 605 effective had this act not taken effect; or

606 (b) If the financing statement is filed in another
 607 jurisdiction, at the earlier of:

608 1. The time the financing statement would have ceased to
 609 be effective under the law of that jurisdiction; or

610 2. By June 30, 2018.

611 (3) The filing of a continuation statement on or after
 612 July 1, 2013, does not continue the effectiveness of the
 613 financing statement filed before July 1, 2013. However, on the
 614 timely filing of a continuation statement on or after July 1,
 615 2013, and in accordance with the law of the jurisdiction
 616 governing perfection as provided in this chapter, as amended by

617 this act, the effectiveness of a financing statement filed in
 618 the same office in that jurisdiction before July 1, 2013,
 619 continues for the period provided by the law of that
 620 jurisdiction.

621 (4) Subparagraph (2)(b)2., applies to a financing
 622 statement that was filed before July 1, 2013, against a
 623 transmitting utility and satisfies the applicable requirements
 624 for perfection under the law of the jurisdiction governing
 625 perfection as provided in this chapter as it existed before July
 626 1, 2013, only to the extent that this chapter, as amended by
 627 this act, provides that the law of a jurisdiction other than the
 628 jurisdiction in which the financing statement is filed governs
 629 perfection of a security interest in collateral covered by the
 630 financing statement.

631 (5) A financing statement that includes a financing
 632 statement filed before July 1, 2013, or a continuation statement
 633 filed on or after July 1, 2013, is effective only to the extent
 634 that it satisfies the requirements of part V, as amended by this
 635 act, for an initial financing statement. A financing statement
 636 that indicates that the debtor is a decedent's estate indicates
 637 that the collateral is being administered by a personal
 638 representative within the meaning of s. 679.5031(1)(b), as
 639 amended by this act. A financing statement that indicates that
 640 the debtor is a trust or is a trustee acting with respect to
 641 property held in trust indicates that the collateral is held in
 642 a trust within the meaning of s. 679.5031(1)(c), as amended by
 643 this act.

644 679.805 When initial financing statement suffices to
 645 continue effectiveness of financing statement.--

646 (1) The filing of an initial financing statement in the
 647 office specified in s. 679.5011 continues the effectiveness of a
 648 financing statement filed before July 1, 2013, if:

649 (a) The filing of an initial financing statement in that
 650 office would be effective to perfect a security interest under
 651 this chapter, as amended by this act;

652 (b) The financing statement filed before July 1, 2013, was
 653 filed in an office in another state; and

654 (c) The initial financing statement satisfies subsection
 655 (3).

656 (2) The filing of an initial financing statement under
 657 subsection (1) continues the effectiveness of the financing
 658 statement filed before July 1, 2013, if:

659 (a) The initial financing statement is filed before July
 660 1, 2013, for the period provided in s. 679.515, as it existed
 661 before its amendment by this act, with respect to an initial
 662 financing statement; and

663 (b) The initial financing statement is filed on or after
 664 July 1, 2013,, for the period provided in s. 679.515, as amended
 665 by this act, with respect to an initial financing statement.

666 (3) To be effective for purposes of subsection (1), an
 667 initial financing statement must:

668 (a) Satisfy the requirements of part IV, as amended by
 669 this act, for an initial financing statement;

670 (b) Identify the financing statement filed before July 1,
 671 2013, by indicating the office in which the financing statement

672 was filed and providing the dates of filing and file numbers, if
 673 any, of the financing statement and of the most recent
 674 continuation statement filed with respect to the financing
 675 statement; and

676 (c) Indicate that the financing statement filed before
 677 July 1, 2013, remains effective.

678 679.806 Amendment of financing statement filed before July
 679 1, 2013.—

680 (1) After the 2013 amendments take effect, a person may
 681 add or delete collateral covered by, continue or terminate the
 682 effectiveness of, or otherwise amend the information provided
 683 in, a pre-effective date financing statement only in accordance
 684 with the law of the jurisdiction governing perfection as
 685 provided in this chapter, as amended by this act. However, the
 686 effectiveness of a pre-effective date financing statement also
 687 may be terminated in accordance with the law of the jurisdiction
 688 in which the financing statement is filed.

689 (2) Except as otherwise provided in subsection (3), if the
 690 law of this state governs perfection of a security interest, the
 691 information in a financing statement filed before July 1, 2013,
 692 may be amended after July 1, 2013, only if:

693 (a) The financing statement filed before July 1, 2013, and
 694 an amendment are filed in the office specified in s. 679.5011;

695 (b) An amendment is filed in the office specified in s.
 696 679.5011 concurrently with, or after the filing in that office
 697 of, an initial financing statement that satisfies s. 679.805(3);
 698 or

699 (c) an initial financing statement that provides the
 700 information as amended and satisfies s. 679.805(3) is filed in
 701 the office specified in s. 679.5011.

702 (3) If the law of this state governs perfection of a
 703 security interest, the effectiveness of a pre-effective-date
 704 financing statement may be continued only under s. 679.804(3)
 705 and (5) or s. 679.805.

706 (4) Whether or not the law of this state governs
 707 perfection of a security interest, the effectiveness of a pre-
 708 effective date financing statement filed in this state may be
 709 terminated after the 2013 amendments take effect by filing a
 710 termination statement in the office in which the pre-effective
 711 date financing statement is filed, unless an initial financing
 712 statement that satisfies s. 679.805(3) has been filed in the
 713 office specified by the law of the jurisdiction governing
 714 perfection as provided in this chapter, as amended by this act,
 715 as the office in which to file a financing statement.

716 679.807 Person entitled to file initial financing
 717 statement or continuation statement.-A person may file an
 718 initial financing statement or a continuation statement under
 719 this part if:

720 (1) The secured party of record authorizes the filing; and

721 (2) The filing is necessary under this part:

722 (a) To continue the effectiveness of a financing statement
 723 filed before July 1, 2013; or

724 (b) To perfect or continue the perfection of a security
 725 interest.

726 679.808 Priority.—This part and the amendments to this
 727 chapter by this act determine the priority of conflicting claims
 728 to collateral. However, if the relative priorities of the claims
 729 were established before July 1, 2013, this chapter as it existed
 730 before July 1, 2013, determines priority.

731 Section 18. Paragraph (m) of subsection (3) of section
 732 680.1031, Florida Statutes, is amended to read:

733 680.1031 Definitions and index of definitions.—

734 (3) The following definitions in other chapters of this
 735 code apply to this chapter:

736 (m) "Pursuant to a commitment," s. 679.1021(1)(ppp)
 737 ~~679.1021(1)(ooo).~~

738 Section 19. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4055 Supreme Court
SPONSOR(S): Metz
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JML	Bond MB
2) Judiciary Committee			

SUMMARY ANALYSIS

This bill repeals statutes relating to the Florida Supreme Court that prohibit justices of the Supreme Court drawing retirement compensation from engaging in the practice of law, require the Supreme Court to appoint a Clerk of the Supreme Court, require the Clerk to have an office in the Supreme Court Building, require the clerk to perform duties as directed by the Court, and provide that when rules and statutes conflict, the rule supersedes the statute.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Retired Justices

This bill repeals s. 25.151, F.S., a 1957 law that prohibits a retired justice from engaging in the practice of law.¹ This statute is likely unconstitutional as it encroaches on the judiciary's exclusive directive to regulate attorneys.² In 1973, the Florida Supreme Court found unconstitutional a substantially similar provision in the Florida Retirement System statutes.³ Repealing this obsolete law removes a provision from the statutes that is likely unconstitutional and not presently enforced.

Clerk of the Supreme Court

This bill repeals ss. 25.191, 25.211, and 25.231, F.S. These 1957 statutes require the appointment of a Clerk of the Supreme Court, require the clerk have an office in the Supreme Court Building, and require that the clerk perform duties as directed by the court.⁴ However, the subsequently-adopted Florida Constitution directs the Supreme Court to appoint a clerk who is to perform duties as the court directs⁵, making the statutes redundant. The only substantive change to the law after repealing these three sections is that the clerk would no longer be required to have an office in the Supreme Court Building.

Rules of the Court

This bill repeals s. 25.371, F.S. This 1957 statute provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision.⁶ Art. V, s. 2(a), Fla. Const., provides, "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts." The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are unconstitutional to the extent of the conflict.⁷ Repeal of this statutory provision will not remove the ability of the Supreme Court's power to promulgate rules of practice and procedure, as this power is a constitutional power under Art. V, s. 2(a). The Court has never cited to this statute; rather, it cites to the Constitutional provisions when deciding cases where a court rule contradicts a statute.⁸

B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., requiring the Supreme Court appoint a clerk.

Section 3 repeals s. 25.211, F.S., relating to the clerk's office.

Section 4 repeals s. 25.231, F.S., relating to the clerk's duties.

Section 5 repeals s. 25.371, F.S., relating to the court's rulemaking power.

Section 6 provides an effective date of July 1, 2012.

¹ L.O.F. 57-274, Sec. 1.

² ART. V, SEC. 15, FLA. CONST.

³ *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973).

⁴ L.O.F. 57-274, Sec. 1.

⁵ ART. V, SEC. 3, FLA. CONST.

⁶ L.O.F. 57-274, Sec. 1.

⁷ *See e.g., Massey v. David*, 976 So.2d 931, 937 (Fla. 2008).

⁸ *See e.g., Massey* (Fla. 2008).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

n/a

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to the Supreme Court; repealing s.
3 25.151, F.S., relating to restricting the practice of
4 law by a retired justice; repealing s. 25.191, F.S.,
5 relating to the requirement to appoint a Clerk of the
6 Supreme Court; repealing s. 25.211, F.S., relating to
7 the requirement that the clerk have an office in the
8 Supreme Court Building; repealing s. 25.231, F.S.,
9 relating to the requirement that the clerk perform
10 duties as directed by the court; repealing s. 25.371,
11 F.S., relating to provision by which rules of the
12 court supersede statutes; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

- 15
16 Section 1. Section 25.151, Florida Statutes, is repealed.
17 Section 2. Section 25.191, Florida Statutes, is repealed.
18 Section 3. Section 25.211, Florida Statutes, is repealed.
19 Section 4. Section 25.231, Florida Statutes, is repealed.
20 Section 5. Section 25.371, Florida Statutes, is repealed.
21 Section 6. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4067 Marshals of District Courts of Appeal

SPONSOR(S): Weinstein

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond MB
2) Judiciary Committee			

SUMMARY ANALYSIS

Florida has five district courts of appeal. Each court appoints a marshal. This bill repeals the statutory requirement that requires the salary of the marshal to be set by general law.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Marshals for the District Courts of Appeal

There are currently five district courts of appeal.¹ Each district court of appeal is required to appoint a marshal.² Subsections 35.26(2), (3) and (4), F.S., provide that:

- The marshal has the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.
- The marshal of each district court of appeal is the custodian of such court's building and grounds.
- The marshal is responsible for security of the court.

Art. V s. 4(c) of the state constitution requires that each district court of appeal appoint a marshal and provides that the salary of the marshal "be fixed by general law."

Section 35.27, F.S., requires that the compensation of the marshal be provided by law.

Effect of the Bill

The bill repeals the statutory requirement that the compensation of the marshal be provided by law. This bill does not affect the constitutional requirement.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.27, F.S., regarding salary of the marshal of a district court of appeal.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

¹ Section 35.01, F.S.

² Section 35.26(1), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Repeal of the statute conforms the law to current practice whereby the salary of a marshal is set by the chief judge of the district court.³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

³ Correspondence from State Courts Administrator regarding HB 4135, dated February 22, 2011.

HB 4067

2012

1 A bill to be entitled
2 An act relating to marshals of district courts of
3 appeal; repealing s. 35.27, F.S., relating to
4 compensation of marshals; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 35.27, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4069 County Courts
SPONSOR(S): Weinstein
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond VTB
2) Judiciary Committee			

SUMMARY ANALYSIS

This bill repeals an obsolete statute requiring all county courts in the state to be considered open for the reception of voluntary pleas of guilt at all times, Sundays excepted.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 34.131, F.S., provides that county courts shall remain open, except on Sundays, to receive voluntary pleas of guilty in all criminal cases. The statute requires county court judges to receive guilty pleas and convict and sentence the defendant as a result of such pleas. This statute derives from the days when circuit court judges literally "rode the circuit," typically appearing in rural counties only twice a year.¹ In those days, a felony defendant in certain counties may have had to wait for up to six months in order to plead guilty if not for the statute allowing for defendants to plead guilty before a county judge.

The state Supreme Court has broad power to adopt rules for the practice and procedure in all state courts.² Procedures for entry of guilty pleas are governed by the Rules of Criminal Procedure.³ Furthermore, the Supreme Court has granted Chief Judge of a circuit court broad administrative authority to designate judges to be assigned to various courts.⁴ In practice, Chief Judges may assign county court judges as temporary judges in circuit courts for any purpose, including the taking of voluntary pleas.⁵

This bill repeals an obsolete statute, s. 34.131, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 34.131, F.S., relating to availability of county courts for the reception of voluntary guilty pleas.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

¹ See s. 26.21, F.S., which requires at least two regular terms of the circuit court to be held in each county in each year, and the subsequent sections that specify the times for holding the terms of the circuit courts in each circuit.

² ART. V, SEC. 2, FLA. CONST.

³ Fla. R. Crim. Pro., Rule 3.170.

⁴ Fla. R. Jud. Admin., Rule 2.215(b)(3).

⁵ See, e.g., Admin. Order of the 14th Jud. Cir. #2011-00-03.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 4069

2012

1 A bill to be entitled
2 An act relating to county courts; repealing s. 34.131,
3 F.S., relating to a requirement that county courts be
4 open for voluntary pleas of guilty at all times,
5 Sundays excepted; providing an effective date.

6

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

8

9 Section 1. Section 34.131, Florida Statutes, is repealed.

10

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4077 Actions for Damages
SPONSOR(S): Metz
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad <i>DC</i>	Bond <i>VB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that a court may require the parties to attend a settlement conference. This bill repeals the statutory provision regarding such conferences.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 768.75, F.S., was enacted as part of the Tort Reform and Insurance Act of 1986.¹ It provides that in any action to which the provisions regarding damages for negligence apply, the court may require a settlement conference to be held at least three weeks before the date set for trial. Attorneys who will conduct the trial, parties, and persons with authority to settle must attend the settlement conference held before the court unless excused by the court for good cause.

Section 38.10, F.S., provides that a judge shall be disqualified for prejudice against a party in an action before the court. A judge's mere knowledge of settlement proceedings does not constitute grounds for disqualification based on prejudice.² However, ex parte communication between the judge and a party is grounds for disqualification.³

Section 44.102, F.S., provides that a court, upon the request of a party, must refer the action for monetary damages at issue to mediation. This statute was passed in 1987.

The bill repeals s. 768.75, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 768.75, F.S.

Section 2 provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

¹ Ch. 86-160, L.O.F.

² See *Enterprise Leasing Co. v. Jones*, 750 So. 2d 114 (Fla. 5th DCA 1999) (holding that judge's mere knowledge of settlement negotiations and offers did not require disqualification).

³ See, e.g., *Klapper-Barrett v. Nurell*, App. 5 Dist., 742 So.2d 851 (1999) (holding that judge's ex parte communication with a party in a dissolution of marriage proceeding regarding settlement negotiations warranted a grant of a motion to recuse).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 4077

2012

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A bill to be entitled
An act relating to actions for damages; repealing s.
768.75, F.S., relating to an optional settlement
conference in certain tort actions; providing an
effective date.

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

Section 1. Section 768.75, Florida Statutes, is repealed.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4081 District Courts Of Appeal
SPONSOR(S): Weinstein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary Jmc	Bond NB
2) Judiciary Committee			

SUMMARY ANALYSIS

When the Legislature created the chapter of the Florida Statutes respecting the District Courts of Appeal and substantially amended the chapter respecting the Supreme Court in 1957, it included a section in each providing that the salary of the judges of the district courts of appeal shall be as provided by law. The Supreme Court provision was repealed as obsolete in 1972, but the District Courts of Appeal provision remains.

This bill repeals the statutory provision providing that the salary of the judges of the District Courts of Appeal shall be provided by law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 35.19, F.S., simply states, "The salary of the judges of the district courts of appeal shall be as provided by law." This section was created in 1957 as part of the original bill creating Chapter 35 of the Florida Statutes, respecting the District Courts of Appeal.¹ That same year, the Legislature passed a similar provision respecting the salary of the justices of the Supreme Court², but that section was repealed as obsolete in 1972.³ It is unclear why s. 35.19, F.S. was not repealed in the same bill.

This bill repeals s. 35.19, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.19, F.S., relating to compensation of district court of appeal judges.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹ L.O.F. 57-248.

² L.O.F. 57-274.

³ L.O.F. 72-440.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 4081

2012

1 A bill to be entitled
2 An act relating to district courts of appeal;
3 repealing s. 35.19, F.S., which states that the salary
4 of judges of district courts of appeal shall be as
5 provided by law; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 35.19, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4093 Court Costs
SPONSOR(S): Porter
TIED BILLS: IDEN./SIM. BILLS: SB 882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>v mc</i>	Bond <i>NB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

This bill repeals an 1861 law that prohibits the Clerk of the Supreme Court from charging a losing party in the Supreme Court for copies of the record provided to the Attorney General.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section s. 57.101, F.S. was first enacted in 1861.¹ The original context of the law was that the Clerk of the Supreme Court may not charge a losing party for copies that the Clerk is required to provide to the Attorney General.² That context has been lost in the subsequent shuffling of provisions of the Florida Statutes. Today, the statute simply provides that a person may not be charged a fee for something the person did not order or request.³

This bill repeals s. 57.101, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 57.101, F.S., relating to court costs.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹ L.O.F. ch. 1137, s. 5, F.S., 1861.

² L.O.F. ch. 1137, F.S., 1860.

³ Section 57.101, F.S.

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 4093

2012

1 A bill to be entitled
2 An act relating to court costs; repealing s. 57.101,
3 F.S., relating to the taxing of costs in the Supreme
4 Court for copies of records of any paper on file in
5 the Supreme Court ordered by a losing party or his or
6 her attorney; providing an effective date.

7

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

9

10 Section 1. Section 57.101, Florida Statutes, is repealed.

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

