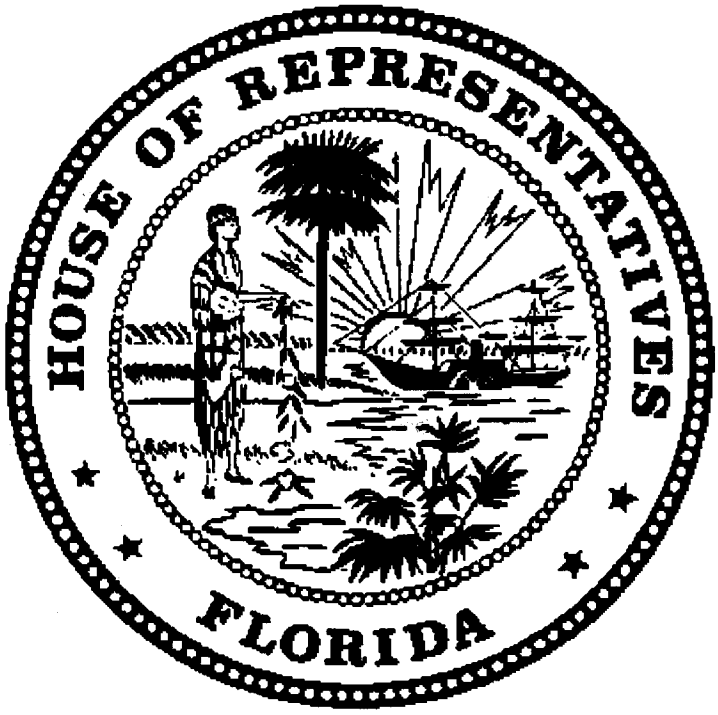

Judiciary Committee

April 4, 2014
9:30 AM
404 HOB

Meeting Packet

Will Weatherford
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:	Friday, April 04, 2014 09:30 am
End Date and Time:	Friday, April 04, 2014 12:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs by Government Operations Subcommittee, Gibbons
HB 125 Pub. Rec./Claim Settlement on Behalf of Minor or Ward by Schwartz
HM 381 Article V Convention of the States by Metz
CS/CS/HB 489 Subsurface Rights by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Spano
CS/HB 491 Infectious Disease Elimination Pilot Program by Health Quality Subcommittee, Pafford
CS/CS/HB 595 Council on the Social Status of Black Men and Boys by Government Operations Subcommittee, Civil Justice Subcommittee, Williams, A.
CS/CS/HB 659 Protective Orders by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Mayfield
CS/HB 685 Business Organizations by Civil Justice Subcommittee, Rooney, Workman
CS/HB 755 Family Law by Civil Justice Subcommittee, Steube
CS/HB 781 Legal Notices by Civil Justice Subcommittee, Powell
CS/CS/HB 989 Human Trafficking by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Trujillo
CS/HB 1047 Termination of Pregnancies by Health & Human Services Committee, Adkins
CS/HB 1397 Family Law by Civil Justice Subcommittee, La Rosa
HB 3519 Relief/Monica Cantillo Acosta & Luis Alberto Cantillo Acosta/Miami-Dade County by Santiago
HB 3529 Relief/Carl Abbott/Palm Beach County School District by Raburn
CS/HB 3531 Relief/Ronald Miller/City of Hollywood by Civil Justice Subcommittee, Gibbons
CS/HB 7037 Residential Communities by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Spano
HB 7085 Security of Confidential Personal Information by Civil Justice Subcommittee, Metz
CS/HB 7087 Pub. Rec./Notices of Data Breach and Investigations/DLA by Government Operations Subcommittee, Civil Justice Subcommittee, Metz
HB 7161 Arbitration by Civil Justice Subcommittee, Passidomo
HB 7163 Ratification of Rules/Department of Juvenile Justice by Rulemaking Oversight & Repeal Subcommittee, Gaetz

NOTICE FINALIZED on 04/02/2014 16:14 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs
SPONSOR(S): Government Operations Subcommittee; Gibbons
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
2) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
3) Judiciary Committee		Cox	Havlicak

SUMMARY ANALYSIS

Rule 2.420 of the Florida Rules of Judicial Administration states the public must have access to records of the judicial branch. However, Rule 2.420 establishes 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information) that the public may not access. Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing. Drug court records contained in court files are not currently listed as Type I information. In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill creates a public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program. The exemption applies to such information contained in the following records:

- Records created or compiled during screenings for participation in a treatment-based drug court program;
- Records created or compiled during substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill authorizes release of the confidential and exempt information in certain instances. It also provides that the disclosure provisions do not apply to records of a service provider when such records pertain to the identity, diagnosis, and prognosis of or provision of service to an individual.

The bill provides for retroactive application of the public record exemption. The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator reports that the bill will result in a reduction in judicial and court system workload, but that the precise impact cannot be accurately determined.

Article I, Section 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Public Access to Judicial Records

Rule 2.420 of the Florida Rules of Judicial Administration (Rule) states the public must have access to records of the judicial branch.[3,4] However, the Rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).[5] Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.[6]

---

[1] Section 24(c), Art. I of the State Constitution.

[2] *See* s. 119.15, F.S.

[3] Fla. R. Jud. Admin. 2.420(b)(1) defines "records of the judicial branch" as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- "Court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- "Administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

[4] Fla. R. Jud. Admin 2.420(b)(2) defines "judicial branch" as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

[5] *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

[6] *Id.*

In 2011, it was suggested that the Rule be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.[7] The opinion further stated "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."[8]

Records from Treatment-Based Drug Courts

Section 397.334, F.S., establishes pretrial and postadjudicatory treatment-based drug court programs. These programs are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration.[9] Participants in drug court programs receive substance abuse treatment, screenings, and continual monitoring and evaluations.[10] Records of the screenings and evaluations can be reviewed by court officials as part of the process of determining whether the individual is complying with the drug court program.[11]

Since drug court records contained in court files are not currently listed as Type I information, a motion must be filed and the trial court must hold a hearing in order to make these records confidential.[12]

Effect of the Bill

The bill amends s. 397.334, F.S., to make information relating to a participant or a person considered for participation in a treatment-based drug court program confidential and exempt[13] from public records requirements. The exemption applies to such information contained in the following records:

- Records created or compiled during screenings for participation in a treatment-based drug court program;
- Records created or compiled during substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill provides that the confidential and exempt information may be disclosed:

- Pursuant to the written request of the participant or the person considered for participation, or his or her legal representative.
- To another governmental entity in the furtherance of its responsibilities associated with the screening of or providing treatment to a person in a treatment-based drug court program.

Disclosure provisions do not apply to records of a service provider that pertain to the identity, diagnosis, and prognosis of or provision of service to an individual. Release of those records is governed by s. 397.501(7), F.S.[14]

---

[7] *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).
[8] *Id.*
[9] Section 397.305, F.S.
[10] Section 397.334(4), F.S.
[11] Section 397.334(5), F.S.
[12] Office of the State Courts Administrator, Analysis of HB 109 (on file with the Criminal Justice Subcommittee). *See* Fla. R. Jud. Admin. 2.420.
[13] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att'y Gen. (1985).

The bill provides for retroactive application[15] of the public record exemption. It also provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Provides a public necessity statement.

Section 3. The bill is effective upon becoming a 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 eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator (OSCA) determined the bill will result in a reduction in judicial and court system workload.[16] However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the reduction in workload.[17]

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.

---

[14] Section 397.501(7), F.S., provides that records of service providers that pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with chapter 397, F.S., and with applicable federal confidentiality regulations, and are exempt from public record requirements. Such records may not be disclosed without the written consent of the individual to whom they pertain except in certain instances as provided in the subsection.

[15] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[16] Office of the State Courts Administrator, Analysis of HB 109 (2014) (on file with the Criminal Justice Subcommittee).

[17] *Id.*

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:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information identifying a participant or a person considered for participation in a treatment-based drug court program contained in certain records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

OSCA reports that this bill will result in the need for changes to Rule 2.420(d)(1)(B), of the Florida Rules of Judicial Administration to add drug court records contained in court files as automatic Type I information.[18]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment clarified the public record exemption, authorized release of the confidential and exempt information in certain instances, provided that the disclosure requirements do not apply to records of a service provider, and provided for retroactive application of the public record exemption.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

[18] *Id.*

A bill to be entitled

An act relating to public records; amending s. 397.334, F.S.; providing an exemption from public records requirements for information relating to screenings for participation in a treatment-based drug court program, substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports regarding a participant or a person considered for participation in a treatment-based drug court program; providing for the disclosure of certain records; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (10) is added to section 397.334, Florida Statutes, to read:

397.334 Treatment-based drug court programs.—

(10)(a) Information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, of the State Constitution:

1. Records created or compiled during screenings for

participation in the program.

2. Records created or compiled during substance abuse screenings.

3. Behavioral health evaluations.

4. Subsequent treatment status reports.

(b) Such confidential and exempt information may be disclosed:

1. Pursuant to the written request of the participant or person considered for participation, or his or her legal representative.

2. To another governmental entity in the furtherance of its responsibilities associated with the screening of or providing treatment to a person in a treatment-based drug court program.

(c) Records of a service provider that pertain to the identity, diagnosis, and prognosis of or provision of service to any individual shall be disclosed pursuant to s. 397.501(7).

(d) This exemption applies to such information described in paragraph (a) relating to a participant or a person considered for participation in a treatment-based drug court program before, on, or after the effective date of this exemption.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information relating to a participant or person considered for participation in a treatment-based drug court program under s. 397.334, Florida Statutes, which is contained in certain records be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Protecting information contained in records created or compiled during screenings for participation in a treatment-based drug court program, records created or compiled during substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports is necessary to protect the privacy rights of participants or individuals considered for participation in treatment-based drug court programs. Accordingly, the Legislature finds that the chilling effect to an individual who is seeking treatment for his or her substance abuse which would result from the release of this information substantially outweighs any public benefit derived from disclosure to the public. Making this information confidential and exempt will protect information that is of a sensitive, personal nature; thus, the release of this information would cause unwarranted damage to the reputation of an individual. Furthermore, making this information confidential and exempt will encourage individuals to participate in drug court programs, and thereby promote the effective and efficient administration of treatment-based drug court programs.

Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 109 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION		
ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Gibbons offered the following:

Amendment

Remove lines 38-39 and insert:

its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a treatment-based drug court

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Pub. Rec./Claim Settlement on Behalf of Minor or Ward
SPONSOR(S): Schwartz
TIED BILLS: HB 123 **IDEN./SIM. BILLS:** CS/SB 108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Government Operations Subcommittee	10 Y, 0 N	Williamson	Williamson
3) Judiciary Committee		Ward	Havlicak

SUMMARY ANALYSIS

Litigation settlement agreements in guardianship cases routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of $15,000 without court approval. The court approval process requires a petition setting forth the terms of the settlement. An order is eventually entered that also may contain the terms of settlement, or may refer to the petition. The petition and the order are part of a court file, and therefore are a matter of public record and open for inspection under current law.

The bill amends the guardianship law to provide that the petition requesting permission for settlement of a claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from public records requirements. The court may order partial or full disclosure of the confidential and exempt record upon a showing of good cause.

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

The bill provides that the exemption will take effect on the same date as House Bill 123 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain information related to guardianship; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. An exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S.[2] However, the Florida Supreme Court found that "both civil and criminal proceedings in Florida are public events" and that the court will "adhere to the well-established common law right of access to court proceedings and records."[3] There is a Florida constitutional guarantee of access to judicial records.[4] The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.[5]

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.[6] If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.[7] Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.[8] However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.[9]

---

[1] Art I., s. 24(c), Fla. Const.
[2] *See* e.g., *Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995).
[3] *Barron v. Florida Freedom Newspapers*, 531 So.2d 113, 116 (Fla. 1988).
[4] Art I., s. 24(a), Fla. Const.
[5] Art I., ss. 24(c) and (d), Fla. Const.
[6] *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).
[7] *Id.*
[8] *Id.*
[9] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of $15,000 without court approval.[10] The court approval process requires a petition setting forth the terms of the settlement.[11] An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.[12] The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Effect of the Bill

The bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

The bill includes a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of House Bill 123, if adopted in the same legislative session.

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.

[10] *See* s. 744.301(2), F.S.
[11] Section 744.387, F.S.
[12] *Id.*

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 direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court system and clerks.

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:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption related to guardianships. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records; amending s. 744.3701, F.S.; creating an exemption from public records requirements for records relating to the settlement of a claim on behalf of a minor or ward; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a minor or ward, upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 744.3701, Florida Statutes, is amended to read:

744.3701 Confidentiality ~~Inspection of report~~.—

(1) Unless otherwise ordered by the court, upon a showing of good cause, an ~~any~~ initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and

the guardian's attorney, the guardian ad litem with regard to the settlement of the claim, ~~and~~ the ward if he or she is at least 14 years of age and has not~~, unless he or she is a minor or has~~ been determined to be totally incapacitated, ~~and~~ the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a ~~any~~ real property transaction or for such other purpose as the court allows~~, in its discretion~~.

(3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Section 2. The Legislature finds that it is a public necessity to keep confidential and exempt from public disclosure

information contained in a settlement record which could be used to identify a minor or ward. The information contained in these records is of a sensitive, personal nature, and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records. The Legislature finds that the court retaining discretion to direct disclosure of these records is a fair alternative to public access.

Section 3. This act shall take effect on the same date that HB 123 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 381 Article V Convention of the States
SPONSOR(S): Metz and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 2 N	Dougherty	Rojas
2) Ethics & Elections Subcommittee	8 Y, 1 N	Davison	Marino
3) Judiciary Committee		Aziz PA	Havlicak RH

SUMMARY ANALYSIS

Article V of the United States Constitution prescribes two methods for amending the Constitution. One method is for both houses of Congress, by two-thirds vote, to propose an amendment that becomes effective when ratified by three-fourths of the states (38 states). All 27 amendments to the Constitution were adopted through this procedure.

The other method, which has never been used, requires Congress to call a constitutional convention (Article V Convention) to propose amendments when two-thirds of the states (34 states) apply for such a convention. These proposed amendments would require approval of three-fourths of the states in order to be ratified. Although never used in full, this method has been a useful tool to provoke congressional action.

The memorial serves as an application to Congress, pursuant to Article V of the United States Constitution, to call an Article V Convention of the states for the limited purpose of proposing amendments to the United States Constitution that:

- Impose fiscal restraints on the federal government;
- Limit the power and jurisdiction of the federal government; and
- Limit terms of office for federal officials and members of Congress.

If an Article V Convention is called to consider any one of the three proposed amendments, the memorial may count toward the required number of applications from the states. Additionally, the memorial specifies that it is withdrawn if it is used to call an Article V Convention for any purpose outside the scope of these three topics. The memorial constitutes a continuing application for an Article V Convention until the legislatures of at least two-thirds of the states have made applications on one or more of the proposed amendment categories.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for the Legislature to express its opinion to the federal government.

This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED MEMORIAL:

Present Situation

Methods of Amending the U.S. Constitution

Article V of the United States Constitution prescribes two methods for amending the Constitution. One method is for Congress to propose an amendment that is then ratified by the states. All 27 amendments to the Constitution were adopted through this procedure. The other method, which has never been used, is for the states to apply for a constitutional convention that proposes amendments.[1]

Congressional Amendments

Congress, by a two-thirds vote in both houses, may propose a constitutional amendment in the form of a joint resolution. After Congress proposes an amendment, the Archivist of the United States is responsible for administering the ratification process under the provisions of 1 U.S.C. s. 106b. Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The Office of the Federal Register (OFR) assembles an information package for the states that includes copies of the joint resolution and the statutory procedure for ratification under 1 U.S.C. s. 106b. The Archivist submits the proposed amendment to the states for their consideration by sending a letter of notification and the OFR informational material to each governor. The governors then formally submit the amendment to their state legislatures.

When a state ratifies a proposed amendment, it sends a certified copy of the state action to the Archivist. A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states (38 states). The OFR verifies the ratification documents and drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice that the amendment process has been completed.[2] Since 1789, Congress has proposed 33 amendments by this method, 27 of which have been adopted.[3]

Constitutional Convention Amendments

A constitutional amendment may also be proposed by a constitutional convention (Article V Convention) applied for by two-thirds of the state legislatures (34 states). This method has never been used.[4] If 34 states apply, Congress must call an Article V Convention to consider and propose amendments. These proposed amendments must be ratified by three-fourths of the states (38 states). Though the specific procedures for an Article V Convention are not specified in the Constitution, Congress has historically taken on broad responsibilities in connection with a convention by administering state applications, establishing procedures to summon a convention, setting the amount of time allotted to its deliberations, determining the number and selection process of its delegates,

---

[1] ERWIN CHEMERINSKY, CONSTITUTIONAL LAW, pg. 6 (3rd ed. 2006).

[2] *The Constitutional Amendment Process,* U.S. National Archives and Records Administration, http://www.archives.gov/federal-register/constitution/ (last visited March 18, 2014).

[3] Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* 1 (2012).

[4] *See* Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 Tenn. L. Rev. 663, 665 (2011)("Despite the submission of approximately 750 applications for an Article V convention, including applications by all fifty states, no constitutional convention has ever been called.").

setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.[5]

The records of the Philadelphia Convention of 1787 demonstrate that the founders intended to balance Congress' amendatory power by providing the Article V Convention method to empower the people to propose amendments. Article V identifies these methods as equal and requires the same ratification for all proposed amendments.[6]

Although never used in full, this method has been a useful tool to provoke congressional action. The most successful instance of using the threat of a constitutional convention to induce change was the movement for the direct election of senators, which helped prod Congress to propose the 17th Amendment.[7]

Spending Behavior of the Federal Government

The forecasted federal spending for fiscal year 2014 is $3.778 trillion. Mandatory spending will account for more than 60 percent ($2.3 trillion), supporting programs such as Social Security ($860 billion), Medicare ($524 billion), Medicaid ($304 billion).[8] Also included in fiscal year 2014's mandatory spending is the $223 billion interest payment on the $17 trillion national debt.[9]

The remaining $1.242 trillion of the year's expenses will go towards discretionary spending as negotiated between Congress and the President.[10] The Bipartisan Budget Act approves $1.012 trillion in discretionary spending, including $520.5 billion for defense.[11] President Obama's budget proposal appropriates $1.242 trillion to run the rest of the federal government, including $618 billion for military expenditure.[12]

Balanced Budget Amendment

A balanced budget amendment is a constitutional prohibition of a government's spending exceeding its income.[13] Most states have adopted balanced budget provisions, but the federal government has not.[14] Such an amendment would make it unconstitutional for the federal government to run annual budget deficits.

Most amendment proposals include additional restrictive elements to be imposed on the federal government beyond maintaining a balanced budget. Some common examples include the following:

- A requirement that the President submit a balanced budget to Congress;
- Provisions that allow some flexibility in times of war or economic recession provided that a congressional supermajority vote in favor of the waiver;
- A provision requiring a supermajority vote of both houses to raise the debt ceiling;
- A cap on total spending unless waived by a supermajority of both houses;

---

[5] *Id.*
[6] *Id.* at 2.
[7] *Id.* at 1.
[8] *See* Office of Management and Budget, FY 2014 Budget, Table S-5, available at http://useconomy.about.com/library/FY2014_budget.pdf (last visited March 18, 2014).
[9] By 2023, interest payments on the national debt are expected to quadruple to $763 billion. *Id.*
[10] *Id.*
[11] The Bipartisan Budget Act of 2013, Committee on the Budget, available at http://budget.house.gov/the-bipartisan-budget-act-of-2013/ (last visited March 18, 2014).
[12] Office of Management and Budget, *supra* note 8.
[13] *Balanced Budget Amendment: Pros and Cons,* Peter G. Peterson Foundation, June 21, 2012, available at http://pgpf.org/Issues/Fiscal-Outlook/2012/06/062112-Balanced-Budget-Explainer (last visited March 18, 2014).
[14] *Does the United States Need a Balanced Budget Amendment?,* U.S. News & World Report, available at http://www.usnews.com/debate-club/does-the-united-states-need-a-balanced-budget-amendment (last visited March 18, 2014).

- A limit on the total level of revenues unless waived by a supermajority of both houses;
- A provision to prevent the courts from enforcing the amendment through tax increases; and
- A provision assigning congressional responsibility to enforce the amendment through legislation.[15]

Line Item Veto

A line-item veto is the executive power to remove specific provisions from a bill without vetoing the entire bill.[16] Nearly all state governors have this authority, but the President does not.[17] In an effort to control spending, Congress attempted to grant the President line-item veto power with the Line Item Veto Act of 1996. However, the United States Supreme Court found it to be a unilateral amendment in violation of the Presentment Clause and overruled it as unconstitutional in 1998.[18] Therefore, without a significant self-reversal by the Court, the only way to grant the President line-item veto power is through a constitutional amendment.

Expansion of Federal Government Power and Jurisdiction: the Commerce Clause

The structure of the federal system protects the states by limiting the federal government to enumerated powers and reserving any non-enumerated powers for the states.[19] This system views state sovereignty as inherent (subject to constitutional limits) while federal sovereignty comes from the Constitution.

The Commerce Clause grants Congress the power "[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes."[20] As it is an explicit grant of federal regulatory authority, this provision is considered a restriction on the states. Congress often relies on the Commerce Clause to justify regulating states' and citizens' activities. This provision has been the source of ongoing controversy regarding the balance of power between the federal government and the states. However, the Constitution does not define "commerce," which has led to a significant and ongoing debate as the interpretation defines the division of federal and state powers.[21]

The United States Supreme Court has historically expanded the applicability of the Commerce Clause by changing its interpretation of "commerce" and the tests applied to various legislative measures. In the 1819 case of *McCulloch v. Maryland*, the Court held that the federal government does not need an explicit right to act, but can implement an enumerated power in any legitimate manner.[22] The Commerce Clause was examined and federal powers again broadened in the 1824 case *Gibbons v. Ogden*, in which the Court held that Congress can regulate any interstate activity if the motivation is affecting commercial intercourse between the states or any other enumerated power.[23] In 1905, the Court ruled that the Commerce Clause authorized Congress to regulate a local Chicago meat market under the Sherman Anti-Trust Act.[24] It held that a purely local business could become part of a continuous commerce "current" of interstate movement of goods and services.[25]

---

[15] *Balanced Budget Amendment: Pros and Cons, supra* note 13.
[16] Louis Fisher, *How Successfully Can the States' Item Veto Be Transferred to the President?,* 75 GEO. L.J. 159, 159 (1986).
[17] *Id.* at 178.
[18] *Clinton v. City of New York*, 524 U.S. 417 (1998).
[19] U.S. CONST. amend. X.
[20] U.S. CONST. art. I, § 8.
[21] *Commerce Clause,* Cornell University Law School Legal Information Institute, available at http://www.law.cornell.edu/wex/commerce_clause (last visited March 19, 2014).
[22] 17 U.S. 316 (1819).
[23] *Commerce Clause, supra* note 24 (citing *Gibbons v. Ogden*, 22 U.S. 1 (1824)).
[24] *Id.* (citing *Swift & Company v. United States*, 196 U.S. 375 (1905)).
[25] *Id.*

Despite these decisions, the Commerce Clause could still effectively be used to limit the federal government's power in the early years of the New Deal. By 1932, political momentum and efforts by President Franklin D. Roosevelt led to progressive legislation. Under the New Deal legislation, congressional Commerce Clause powers expanded into areas never before considered "commerce."[26]

Initially unwilling to allow Congress to expand its regulatory authority to the detriment of states' rights, the Supreme Court overturned many New Deal legislative measures.[27] In response to the Court's hostility toward his legislation, President Roosevelt proposed the "Court-packing plan" in 1937, which would have expanded the size of the Supreme Court from nine to fifteen justices. Although the plan failed, the proposal is largely credited with changing the Court's view on New Deal legislation.[28]

Beginning in 1937 with the landmark case *Jones & Laughlin Steel*, the Court recognized broader grounds upon which the Commerce Clause could be used to regulate state activity—most importantly, that an activity is commerce if it has a "substantial economic effect" on interstate commerce or if the "cumulative effect" of one act could have an effect on such commerce.[29] In *Jones & Laughlin Steel*, that included labor relations for industries whose strife might be a national concern.[30]

The Commerce Clause was used to pass the Civil Rights Act of 1964 so that the federal government could charge non-state actors with Equal Protection violations, previously impossible due to the Fourteenth Amendment's limited application to state actors. The same year, the Supreme Court found that Congress had regulatory authority over a business serving mostly interstate travelers.[31] In a separate case, it also ruled that the federal civil rights legislation could regulate a family-owned restaurant with local customers because the restaurant served food that had previously crossed state lines.[32]

It wasn't until 1995 that the Supreme Court revisited limits on the Commerce Clause. The Court found that congressional regulatory powers only apply to the channels of commerce, the instrumentalities of commerce, and action that substantially affects interstate commerce.[33] Federal regulatory authority was further circumscribed in 2000 when the Court held that the Commerce Clause could not be relied upon to make domestic violence a federal crime.[34] These cases show that the Court is still willing to broadly interpret the Commerce Clause, but if it does not find activity substantial enough to constitute interstate commerce, it will not accept Congress' stated reason for federal regulation.[35]

Congressional Term Limits

The United States Constitution governs congressional membership.[36] It specifies that members of the United States House of Representatives serve two-year terms and members of the United States. Senate serve six-year terms.[37] The Constitution does not limit the number of terms or total years a

---

[26] These included the regulation of in-state industrial production, worker hours, and wages. *Commerce Clause, supra* note 24.
[27] It found that the National Industrial Recovery Act was unconstitutional as applied to a poultry seller who bought and sold chicken only within the state of New York. *Id.* (citing *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). The Court also found the Bituminous Coal Conservation Act unconstitutional. *Carter v. Carter Coal Corp.*, 298 U.S. 238 (1936)).
[28] *Id.*
[29] *Id.* (citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)).
[30] *NLRB*, 301 U.S. at 31-32.
[31] *Commerce Clause*, *supra* note 24 (citing *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964)).
[32] *Id.* (citing *Katzenbach v. McClung*, 379 U.S. 274 (1964)).
[33] *Id.* (citing *Lopez v. United States*, 514 U.S. 549 (1995)). The defendant was charged with violating the federal Gun Free School Zones Act of 1990 by bringing a handgun onto school grounds. The government claimed regulatory authority over firearms in local schools under the Commerce Clause, arguing that a firearm on campus would lead to violent crime and therefore affect general economic conditions.
[34] *Id.* (citing *Morrison v. United States*, 529 U.S. 598 (2000)).
[35] *Id.*
[36] U.S. CONST. art. I, § 2; U.S. CONST. art. I, § 3.
[37] *Id.*

member of Congress may serve.[38] Thus, the only limit on the length of congressional membership is the possibility of not being reelected.

Background on the Term Limit Debate

The debate traces back to the late 18th Century;[39] however, it took many years to develop into its present form. Until the 1900s, support for term limits was essentially deemed irrelevant because it was uncommon for members of Congress to serve for more than a few terms.[40] As time progressed through the 20th Century and reelection rates for congressional incumbents began to increase,[41] the push for term limits also grew but never with much success.[42] Proponents of term limits did not gain any significant or measurable support until the early 1990s, when twenty-three states, including Florida, passed laws imposing term limits on their respective federal legislators.[43] These efforts were eventually rendered void, however, with the 1995 Supreme Court case *U.S. Term Limits, Inc. v. Thornton.*[44] In that case, the Court held the following:

1) State-imposed candidacy limitations on federal legislative office violate the United States Constitution's "qualifications clauses;" and
2) Term limits on federal legislators may only be imposed by an amendment to the United States Constitution.[45]

Since 1995, congressional members have filed over seventy bills proposing an amendment to limit their terms, but none have been successful.[46]

Effect of Proposed Memorial

The memorial serves as an application to Congress, pursuant to Article V of the U.S. Constitution, to call an Article V Convention of the states for the limited purpose of proposing amendments to the United States Constitution that:

- Impose fiscal restraints on the federal government;
- Limit the power and jurisdiction of the federal government; and
- Impose congressional term limits.

---

[38] *Id.*

[39] The Framers debated the issue before drafting the final version of the United States Constitution as there were term limits for delegates to the Continental Congress under the Articles of Confederation. *See* Dwayne A. Vance, *State-Imposed Congressional Term Limits: What Would the Framers of the Constitution Say?* 1994 B.Y.U. L. REV. 429 (1994)(For example, Hamilton and Madison opposed term limits; Jefferson supported term limits.).

[40] Fla. H.R. Comm. on State Affairs, HM 83 (2012) Staff Analysis 2 (final March 15, 2012), available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0083z.FAS.DOCX&DocumentType=Analysis&BillNumber=0083&Session=2012 (citing Tiffanie Kovacevich, *Constitutionality of Term Limits: Can States Limit the Terms of Members of Congress?*, 23 PAC. L.J. 1677, 1680 (1992)).

[41] For data on re-election rates since 1964, see http://www.opensecrets.org/bigpicture/reelect.php (last visited March 28, 2014).

[42] For example, discussion of congressional term limits came about during the debate before the 1951 ratification of the 22nd amendment, which imposed a two-term limit on the office of the President. Former Senator O'Daniel, a Democrat from Texas, sought a proposal for congressional term limits, but he only received one vote.

[43] Sula P. Richardson, U.S. Congressional Research Service. *Term Limits for Members of Congress: State Activity* (June 4, 1998), available at http://digital.library.unt.edu/ark:/67531/metacrs582/m1/1/high_res_d/96-152_1998Jun04.pdf (finding the following states have passed some form of congressional term limits: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY)(last visited on March 28, 2014).

[44] 514 U.S. 779 (1995).

[45] *Id.*

[46] *See, e.g.*, H.R.J. Res. 108, 113th Cong. (2014); H.R.J. Res. 93, 112th Cong. (2011); H.R.J. Res. 67, 111th Cong. (2010); H.R.J. Res. 24, 110th Cong. (2007); H.R.J. Res. 11, 109th Cong. (2005); H.R.J. Res. 81, 108th Cong. (2003); H.R.J. Res. 58, 107th Cong. (2001); H.R.J. Res. 18, 106th Cong. (1999); H.R.J. Res. 2, 105th Cong. (1997); H.R.J. Res. 91, 104th Cong. (1995).

The memorial does not specify what restraints or limits should be imposed. Instead, the memorial only serves as a constitutionally required application to Congress to call an Article V Convention to propose amendments related to these specified topics. This procedure for amending the Constitution has never been exercised and many procedural questions remain. The memorial also provides for the severability of the proposed amendment categories. Therefore, if an Article V Convention is called to consider any one of the three proposed amendment categories, the memorial may count toward the required number of applications from the states. The memorial constitutes a continuing application for an Article V convention until the legislatures of at least two-thirds of the states have made applications on one or more of the proposed amendment categories.

Additionally, the memorial specifies that it is withdrawn if it is used to call an Article V Convention or used in support of conducting an Article V Convention for any purpose outside the scope of these three topics.

Lastly, the memorial specifies that copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for the Legislature to express its opinion to the federal government.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States which impose fiscal restraints on the Federal Government, limit the power and jurisdiction of the Federal Government, and limit the terms of office for federal officials and members of Congress.

WHEREAS, the Founders of the United States of America provided in the Constitution of the United States for a limited Federal Government of express enumerated powers, and

WHEREAS, the Tenth Amendment to the Constitution specifically provides that all powers not delegated to the Federal Government nor prohibited by the Constitution to the states are reserved to the states, respectively, or to the people, and

WHEREAS, for many decades, this balance of power was generally respected and followed by those occupying positions of authority in the Federal Government, and

WHEREAS, as federal power has expanded over the past decades, federal spending has exponentially increased to the extent that it is now decidedly out of balance in relation to actual revenues or when comparing the ratio of accumulated

public debt to the nation's gross domestic product, and

WHEREAS, in 2013, the Federal Government's accumulated public debt exceeded $17 trillion, which is more than double that in 2006, and

WHEREAS, projections of federal deficit spending in the coming decades demonstrate that this power shift and its fiscal impacts are continuing and pose serious threats to the freedom and financial security of the American people and future generations, and

WHEREAS, the Founders of the United States of America provided a procedure in Article V of the Constitution to amend the Constitution on application of two-thirds of the several states, calling a convention for proposing amendments that will be valid to all intents and purposes if ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by Congress, and

WHEREAS, it is a fundamental duty of state legislatures to support, protect, and defend the liberty of the American people, including generations yet to come, by asserting their solemn duty and responsibility under the Constitution to call for a convention under Article V for proposing amendments to the Constitution to reverse and correct the ominous path that the country is now on and to restrain future expansions and abuses of federal power, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida does hereby make application to Congress pursuant to Article V of the Constitution of the United States to call an Article V convention for the sole purpose of proposing amendments to the Constitution of the United States which:

(a) Impose fiscal restraints on the Federal Government.

(b) Limit the power and jurisdiction of the Federal Government.

(c) Limit the terms of office for federal officials and members of Congress.

(2) That these three proposed amendment categories are severable from one another and may be counted individually toward the required two-thirds number of applications made by the state legislatures for the calling of an Article V convention.

(3) That this memorial is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the Constitution of the United States for any purpose other than imposing fiscal restraints on the Federal Government, limiting the power and

jurisdiction of the Federal Government, or limiting the terms of office for federal officials and members of Congress.

(4) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on one or more of the three proposed amendment categories listed above.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 489 Subsurface Rights
SPONSOR(S): Business & Professional Regulation Subcommittee; Civil Justice Subcommittee and Spano
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 1 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	11 Y, 0 N, As CS	Butler	Luczynski
3) Judiciary Committee		Cary CMC	Havlicak RH

SUMMARY ANALYSIS

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere. Thus, the owner of the surface rights generally owns the oil, gas and minerals underneath the owner's real property. However, a landowner may lease or sell subsurface rights (the right to oil, gas and minerals) separate from the right to own and occupy the surface of the land, thereby creating two separate estates. In general, separation of the estates is uncommon in much of Florida.

Recently, some developers have sold residential homes on property where the subsurface rights were previously severed. Buyers asserted that they had little or no notice that their property did not include subsurface rights.

As a part of a contract for the sale of residential property by a builder or developer, the bill requires a seller who intends to retain any subsurface rights, or who has previously transferred or has knowledge concerning the prior transfer of such rights, to provide a disclosure summary within the sales contract, or incorporated by references into the sales contract.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, common law real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere.[1]

The owner of land is entitled to the surface of the land and all that is below it, provided that the deed does not contain a reservation of mineral, or subsurface, rights. However, upon transfer, the deed may convey only the surface rights while the transferor may retain the subsurface rights, creating two separate estates.[2] A deed that is silent on the issue is deemed to convey all property rights.

Generally, a reservation or grant of mineral rights reflects an intent to sever the surface estate from the underlying mineral estate, thus establishing two separate estates.[3] A property owner may sever the estates by either:

- Granting the mineral rights;[4] or
- Conveying the property but retaining the mineral rights.[5]

The owner of each estate has the right to exercise all the rights of ownership, subject to any laws and reservations that the deed may contain.[6] Therefore, the owner of the subsurface rights is entitled to the profits from any minerals that are extracted from beneath the surface of the land.

When the estate is severed into separate surface and subsurface estates, the mineral estate is the dominant estate, and therefore the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals. However, in doing so, the owner of the mineral estate may not abuse the surface estate so as to unreasonably injure or destroy its value.[7] A grant or reservation of oil and mineral rights implies an easement for ingress and egress to explore for and remove the oil and minerals found on or underneath the surface estate, even if not specifically granted at the conveyance.[8]

In practice, some developers retain mineral rights without a reference to the mineral rights on the face of the deed. A catch-all provision in the deed, such as, "Subject to Covenants, Conditions, Restrictions, Reservations, Limitations, Easements and Agreements of Records, if any," may be all that appears on the face of the deed to the prospective purchaser. In such cases, a separate grant may have been filed in the public records that list the lots within a development for which mineral rights are being retained by the developer. The developer may also waive its rights of ingress and egress, effectively retaining ownership of any valuable minerals that may reside in the subsurface, but waiving any claim to an easement that would interfere with or even be recognized by the surface owner. While this practice may satisfy constructive notice requirements to make the reservation of mineral rights legally effective,

---

[1] 42 Fla. Jur 2d Property s. 7.
[2] 36 Fla. Jur 2d Mines and Minerals s. 54.
[3] *Noblin v. Harbor Hills Development, L.P.*, 896 So.2d 781, 783 (Fla. 5th DCA 2005).
[4] *Neel v. Rudman*, 33 So.2d 234, 237 (Fla. 1948).
[5] *P & N Inv. Corp. v. Florida Ranchettes, Inc.*, 220 So.2d 451 (Fla. 1st DCA 1969).
[6] 58 C.J.S. Mines and Minerals s. 197.
[7] *P & N Inv. Corp.*, 220 So.2d at 453.
[8] *Noblin*, 896 So.2d at 784-85.

it arguably does not provide adequate notice to the purchaser of the surface property that the purchaser does not own the subsurface rights to the property.[9]

Effect of the Bill

The bill creates s. 689.29, F.S., to require a seller of residential real property to provide a prospective purchaser with a disclosure summary relating to the subsurface rights of the property if the sale is property upon which a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of the property.

The bill creates s. 689.29(3), F.S., to define "subsurface rights" as:

> [R]ights to all minerals, mineral fuels, and other resources, including but not limited to, oil, gas, coal, oil shale, uranium, metals, phosphate and water, whether or not it may be mixed with any other substance, found, or located beneath the surface of the earth.

The bill creates s. 689.29(4), F.S., to define a "seller" for this section as:

> [A]ny seller of real property which, at the time of sale, is zoned for residential use and, is property upon which a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of the property.

The bill creates s. 689.29(1), F.S., to require the disclosure summary be conspicuous, in boldfaced type, and explain that subsurface rights can be severed from the property, and may have been severed in this case. The disclosure summary must state the following:

> SUBSURFACE RIGHTS CAN BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE OWNER OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE OWNER. IF SUBSURFACE RIGHTS ARE OR WILL BE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. WITH REGARD TO THE SEVERANCE OF SUBSURFACE RIGHTS, THE SELLER MAKES THE FOLLOWING DISCLOSURES:
>
> 1. Subsurface rights were severed from the property by a previous owner. (Yes, No, No Representation)
> 2. Seller has severed the subsurface rights from the property. (Yes, No)
> 3. Seller intends to sever the subsurface rights from the property before transferring title to the Buyer. (Yes, No)

The bill creates s. 689.29(2), F.S., to require a seller, as defined by the section, to provide a prospective purchaser with a disclosure summary at or before the execution of the contract for sale. The disclosure summary must be included in the contract for sale, or referred to and incorporated by the contract if attached to the contract. Further, if attached to the contract, the contract must include in prominent language that the potential purchaser should not execute the contract without reading the disclosure summary.

---

[9] *See, e.g., Attorney General Pam Bondi Announces that Home Builder is Notifying Florida Homeowners of Option to Request Mineral Rights*, Attorney General Pam Bondi News Release, February 7, 2014, available at http://myfloridalegal.com/__852562220065EE67.nsf/0/06535F8FE26017C785257C780071C51D?Open&Highlight=0 (last viewed April 1, 2014).

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 689.29, F.S., relating to the sale of residential property and disclosure of seller's intent to retain subsurface rights.

Section 2 provides an effective date of July 1, 2014.

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 fiscal 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 appears to have a minimal direct economic impact on the private sector related to the cost of providing notice to buyers. Given that sellers of real property in Florida rarely sever subsurface rights, the overall impact on the private sector should be negligible.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

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

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided technical changes, altered the remedy to include a liquidated damages provision, and removed a criminal penalty. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

On March 4, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment simplified the language of the bill, and made several substantive changes to bring the bill in line with SB 1556. The bill no longer includes several remedies or penalties available in previous versions, and requires a disclosure summary to be included or included by reference with the contract for the first sale of residential property. The analysis has been updated to reflect the amended bill.

A bill to be entitled

An act relating to subsurface rights; creating s. 689.29, F.S.; requiring a seller of residential property to provide a prospective purchaser with a subsurface rights disclosure summary; providing a form for the disclosure summary; requiring the disclosure summary to be included in the contract for sale or attached to the contract for sale; defining the terms "subsurface rights" and "seller"; providing an effective date.

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

Section 1. Section 689.29, Florida Statutes, is created to read:

689.29 Sale of residential property; disclosure of subsurface rights to prospective purchaser.—

(1) A seller must provide a prospective purchaser of residential property with a disclosure summary at or before the execution of a contract for sale. The disclosure summary must be conspicuous, in boldface type, and in a form substantially similar to the following:

SUBSURFACE RIGHTS

DISCLOSURE SUMMARY

SUBSURFACE RIGHTS CAN BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE OWNER OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE OWNER. IF SUBSURFACE RIGHTS ARE OR WILL BE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. WITH REGARD TO THE SEVERANCE OF SUBSURFACE RIGHTS, THE SELLER MAKES THE FOLLOWING DISCLOSURES:

1. Subsurface rights were severed from the property by a previous owner: Yes ☐ No ☐ No Representation ☐
...(Purchaser's Initials)...

2. Seller has severed the subsurface rights from the property: Yes ☐ No ☐
...(Purchaser's Initials)...

3. Seller intends to sever the subsurface rights from the property before transferring title to purchaser: Yes ☐ No ☐
...(Purchaser's Initials)...

(2) The disclosure summary must be included in the contract for sale or attached to the contract for sale. If attached, the contract for sale must refer to and incorporate by

reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required under this section.

(3) As used in this section, the term "subsurface rights" means the rights to all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, metals, phosphate, and water, regardless of whether they are mixed with any other substance found or located beneath the surface of the earth.

(4) As used in this section, the term "seller" means a seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed, is to be constructed, or has been constructed since the last transfer of the property.

Section 2. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee
Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 689.29, Florida Statutes, is created to read:

689.29.-- Disclosure of subsurface rights to prospective purchaser.—

(1) The seller must provide a prospective purchaser of residential property with a disclosure summary at or before the execution of the contract if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry. The disclosure summary must be conspicuous, in boldfaced type, and in a form substantially similar to the following:

SUBSURFACE RIGHTS
DISCLOSURE SUMMARY

SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, AND REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.

...(Buyer Initials)...

(2) If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required under this section.

(3) As used in this section, the term "subsurface rights" means the rights to all minerals, mineral fuels, and other resources, including, but not limited to, oil, gas, coal, oil shale, uranium, metals, and phosphate, whether or not it may be

mixed with any other substance, found, or located beneath the surface of the earth.

(4) As used in this section, the term "seller" means any seller of real property which, at the time of sale, is zoned for residential use and is property upon which a new dwelling is being constructed or will be constructed pursuant to the contract of sale with the seller, or has been constructed since the last transfer of the property.

Section 2. This act shall take effect October 1, 2014.

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

Remove everything before the enacting clause and insert: An act relating to subsurface rights; creating s. 689.29, F.S.; requiring a seller to provide a prospective purchaser with a subsurface rights disclosure summary; providing the form for the disclosure summary; requiring the disclosure summary to be included in the contract for sale or attached to the contract for sale; defining the term "subsurface rights"; defining the term "seller"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 491 Infectious Disease Elimination Pilot Program
SPONSOR(S): Health Quality Subcommittee; Pafford and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Dunn	O'Callaghan
2) Government Operations Subcommittee	10 Y, 0 N	Stramski	Williamson
3) Judiciary Committee		Ham-Warren HW	Havlicak RH
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 381.0038, F.S., to create the Miami-Dade Infectious Disease Elimination Act (IDEA). The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users, their sexual partners, and offspring. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity.

The pilot program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Strive for a one sterile needle and syringe unit to one used unit exchange ratio; and
- Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-use prevention and treatment.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2019, or 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program. The bill grants DOH the authority to adopt rules to implement the pilot program. The bill includes a severability clause.

The bill may have a positive fiscal impact on state government or local governments. *See* FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used needles and syringes to reduce the transmission of human immunodeficiency virus (HIV) and other blood-borne infections associated with reuse of contaminated needles and syringes by injection-drug users (IDUs).

Federal Ban on Funding

In 2009, Congress passed the FY 2010 Consolidated Appropriations Act, which contained language that removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.[1]

However, on December 23, 2011, President Obama signed the FY 2012 omnibus spending bill that, among other things, reinstated the ban on the use of federal funds for NSEPs; this step reversed the 111th Congress's decision to allow federal funds to be used for NSEPs.[2]

Safe Sharps Disposal

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. "Sharps" is a medical term for devices with sharp points or edges that can puncture or cut skin.

Examples of sharps include:[3]

- Needles – hollow needles used to inject drugs (medication) under the skin.
- Syringes – devices used to inject medication into or withdraw fluid from the body.
- Lancets, also called "fingerstick" devices – instruments with a short, two-edged blade used to get drops of blood for testing. Lancets are commonly used in the treatment of diabetes.
- Auto Injectors, including epinephrine and insulin pens – syringes pre-filled with fluid medication designed to be self-injected into the body.
- Infusion sets – tubing systems with a needle used to deliver drugs to the body.
- Connection needles/sets – needles that connect to a tube used to transfer fluids in and out of the body. This is generally used for patients on home hemodialysis.

On November 8, 2011, the Federal Drug Administration (FDA) launched a new website[4] for patients and caregivers on the safe disposal of sharps that are used at home, at work, and while traveling.[5]

---

[1] Matt Fisher, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, SMARTGLOBALHEALTH.ORG (Feb. 6, 2012), http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/ (last viewed April 2, 2014).
[2] *Id.*
[3] Food and Drug Administration, *Needles and Other Sharps (Safe Disposal Outside of Health Care Settings)*, (Jan. 27, 2014), http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ucm20025647.htm (last viewed April 2, 2014).
[4] *Id.*
[5] *Id.*

According to the FDA, used needles and other sharps are dangerous to people and animals if not disposed of safely because they can injure people and spread infections that cause serious health conditions. The most common infections from such injuries are Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV).[6] Moreover, injections of illicit drugs have been estimated to represent approximately one-third of the estimated 2 to 3 billion injections occurring outside of health-care settings in the U.S. each year, second only to insulin injections by persons with diabetes.[7]

For these reasons, communities are trying to manage the disposal of sharps within the illicit drug population. In San Francisco in 2000, approximately 2 million syringes were recovered at NSEPs, and an estimated 1.5 million syringes were collected through a pharmacy-based program that provided free-of-charge sharps containers and accepted filled containers for disposal. As a result, an estimated 3.5 million syringes were recovered from community syringe users and safely disposed of as infectious waste.[8] Other NSEPs offer methods for safe disposal of syringes after hours. For example, in Santa Cruz, California, the Santa Cruz Needle Exchange Program, in collaboration with the Santa Cruz Parks and Recreation Department, installed 12 steel sharps containers in public restrooms throughout the county.[9]

National Data & Survey Results

According to the Centers for Disease Control and Prevention (CDC), NSEPs can help prevent blood-borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used needles and syringes.[10] Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.[11]

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey found for the first time in 8 years, the number of NSEPs, the number of localities with NSEPs, and public funding for NSEPs decreased nationwide; however, the number of syringes exchanged and total budgets across all programs continued to increase.[12]

In 2011, the Beth Israel Medical Center conducted another survey of NSEPs in the U.S.[13] The results revealed that the most frequent drug being used by participants was heroin, followed by cocaine, and that usually the problems NSEPs encountered had to do with the lack of resources and staff shortages.[14]

A 2012 study compared improper public syringe disposal between Miami, a city without NESPs, and San Francisco, a city with NSEPs.[15] Using visual inspection walk-throughs of high drug-use public

---

[6] *Id.*

[7] Centers for Disease Control, *Update: Syringe Exchange Programs --- United States, 2002*, MMWR WEEKLY, July 15, 2005, *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm (last viewed April 2, 2014) (citing American Association of Diabetes Educators, American Diabetes Association, American Medical Association, American Pharmaceutical Association, Association of State and Territorial Health Officials, National Alliance of State and Territorial AIDS Directors, *Safe Community Disposal of Needles and Other Sharps, Houston, TX: Coalition for Safe Community Needle Disposal* (2002)).

[8] *Id.* (citing Brad Drda et al., *San Francisco Safe Needle Disposal Program, 1991—2001*, 42 J. AM PHARM ASSOC. S115—6 (2002), *available at* http://japha.org/article.aspx?articleid=1035735 (last viewed April 2, 2014)).

[9] Centers for Disease Control, Update: Syringe Exchange Programs --- United States, 2002, *supra* note 7.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] North American Syringe Exchange Network, *2011 Beth Israel Survey, Results Summary, (PowerPoint slide) available at http://www.nasen.org/news/2012/nov/29/2011-beth-israel-survey-results-summary/* (last viewed April 2, 2014).

[14] *Id.*

[15] Hansel E. Tookes, *et al., A Comparison of Syringe Disposal Practices Among Injection Drug Users in a City with Versus a City Without Needle and Syringe Programs*, 123 DRUG & ALCOHOL DEPENDENCE 255 (2012), *available at* http://www.ncbi.nlm.nih.gov/pubmed/22209091 (last visited April 2, 2014).

areas, the study found that Miami was eight times more likely to have syringes improperly disposed of in public areas.[16]

Florida's Current Epidemic of Heroin Use

An estimated 1 million people in the U.S. are living with HIV/AIDs, and it has been estimated that one-third of those cases are linked directly or indirectly to injection drug use, including the injection of heroin.[17] Recently the National Institute on Drug Abuse reported an epidemic of heroin use in South Florida and particularly in Miami-Dade County.[18] The number of heroin-related deaths in Miami-Dade County jumped to 33 in 2012 from 15 in 2011, an 120 percent increase. Statewide, Florida has also seen an upswing in heroin deaths, which rose to 117 in 2012 from 62 in 2011, an increase of 89 percent.[19]

Florida Comprehensive Drug Abuse Prevention and Control Act

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates the above provision is guilty of a misdemeanor of the first degree.[20]

Moreover, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:[21]

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates the above provision is guilty of a felony of the third degree.[22]

Federal Drug Paraphernalia Statute

Persons authorized by state law to possess or distribute drug paraphernalia are exempt from the federal drug paraphernalia statute.[23]

---

[16] *Id.* at 255 (finding "44 syringes/1000 census blocks in San Francisco, and 371 syringes/1000 census blocks in Miami.").
[17] National Institute on Drug Abuse, *Drug abuse is a significant risk factor for HIV/AIDS in the U.S.*, (Oct. 2005) *available at* http://www.drugabuse.gov/publications/topics-in-brief/linked-epidemics-drug-abuse-hivaids (last visited April 2, 2014).
[18] James N. Hall, *Drug Abuse Patterns and Trends in Miami-Dade and Broward Counties, Florida—Update: January 2014*, http://www.drugabuse.gov/ (forthcoming March 2014) (on file with House Health Quality Subcommittee).
[19] Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2012 Report*, (2013), *available at* http://www.news-press.com/assets/pdf/A4212345924.PDF (last visited April 2, 2014).
[20] A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[21] Section 893.147(2), F.S.
[22] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[23] 21 U.S.C. § 863(f)(1).

Effect of Proposed Changes

The bill amends s. 381.0038, F.S., to require DOH to establish a 5 year needle and syringe exchange pilot program in Miami-Dade County. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

The exchange program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Strive for a 1 sterile to 1 used exchange ratio; and
- Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-use prevention and treatment.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2019, or if operated by a designee, 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program.

The bill provides DOH the authority to promulgate rules to implement the pilot program.

The bill includes a severability clause[24] and provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Names the act the "Miami-Dade Infectious Disease Elimination Act (IDEA)."
Section 2. Amends s. 381.0038, F.S., requiring DOH to establish a needle and syringe exchange program.
Section 3. Creates an unnumbered section to provide a severability clause.
Section 4. Provides an effective date of July 1, 2014.

[24] A "severability clause" is a provision of a contract or statute that keeps the remaining provisions in force if any portion of that contract or statute is judicially declared void or unconstitutional. Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion. *See Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The pilot program required by the bill may significantly reduce state and local government expenditures for the treatment of blood borne diseases associated with intravenous drug use for individuals in Miami-Dade County.[25] The reduction in expenditures for such treatments depends on the extent to which the needle and syringe exchange pilot program reduces transmission of blood-borne diseases among intravenous drug users, their sexual partners, offspring, and others who might be at risk of transmission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

---

[25] The State of Florida and county governments incur costs for HIV/AIDS treatment through a variety of programs, including Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program. The lifetime treatment cost of an HIV infection is estimated at $379,668 (in 2010 dollars). Centers for Disease Control, *HIV Cost-effectiveness*, (Apr. 16, 2013) *available at* http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/ (last visited April 2, 2014). Miami-Dade County has 3,274 reported cases of individuals living with HIV/AIDS that have an IDU-associated risk. Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Sept. 17, 2013), *available at* http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/HIV-AIDS-slide%20sets/IDU_2012.pdf (last visited April 2, 2014) (noting that HIV IDU infection risk includes IDU cases, men who have sex with men (MSM)/IDU, heterosexual sex with IDU, children of IDU mom). If 10 percent of those individuals with an IDU-associated risk had avoided infection, this would represent a savings in treatment costs of approximately $124 million.

B. RULE-MAKING AUTHORITY:

The bill provides DOH the authority to promulgate rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Substitutes the term "drug-abuse" for "drug-use" for clarification.
- Provides an alternative expiration date for the pilot program, in case the expiration of the pilot program cannot be based on the date an entity is designated to operate the pilot program.
- Makes technical changes by correcting certain punctuation marks.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to an infectious disease elimination pilot program; creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; amending s. 381.0038, F.S.; requiring the Department of Health to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing for administration of the pilot program by the department or a designee; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information; providing for the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing rulemaking authority; providing for severability; providing an effective date.

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

Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange pilot program.—The Department of Health shall establish a program to educate the public about the threat of acquired immune deficiency syndrome and a sterile needle and syringe exchange pilot program.

(1) The acquired immune deficiency syndrome education program shall:

(a) Be designed to reach all segments of Florida's population;

(b) Contain special components designed to reach non-English-speaking and other minority groups within the state;

(c) Impart knowledge to the public about methods of transmission of acquired immune deficiency syndrome and methods of prevention;

(d) Educate the public about transmission risks in social, employment, and educational situations;

(e) Educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environments;

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high

risk for acquiring acquired immune deficiency syndrome;

(g) Provide information and consultation to state agencies to educate all state employees; ~~and~~

(h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates;~~.~~

(i) Provide information and consultation to local governments to educate local government employees;~~.~~

(j) Make information available to private employers and encourage them to distribute this information to their employees;~~.~~

(k) Contain special components which emphasize appropriate behavior and attitude change; and~~.~~

(l) Contain components that include information about domestic violence and the risk factors associated with domestic violence and AIDS.

(2) The education program designed by the Department of Health shall use ~~utilize~~ all forms of the media and shall place emphasis on the design of educational materials that can be used by businesses, schools, and health care providers in the regular course of their business.

(3) The department may contract with other persons in the design, development, and distribution of the components of the education program.

(4) The department shall establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot

program shall be administered by the department or the department's designee. The department may designate one of the following entities to operate the pilot program at a fixed location or through a mobile health unit: a hospital licensed under chapter 395, a health care clinic licensed under part X of chapter 400, a substance abuse treatment program, an HIV or AIDS service organization, or another nonprofit entity designated by the department. The pilot program shall offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

(a) The pilot program shall:

1. Provide for maximum security of exchange sites and equipment, including an accounting of the number of needles and syringes in use, the number of needles and syringes in storage, safe disposal of returned needles, and any other measure that may be required to control the use and dispersal of sterile needles and syringes.

2. Strive for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

3. Make available educational materials; HIV counseling and testing; referral services to provide education regarding

HIV, AIDS, and viral hepatitis transmission; and drug-abuse prevention and treatment.

(b) The possession, distribution, or exchange of needles or syringes as part of the pilot program established by the department or the department's designee is not a violation of any part of chapter 893 or any other law.

(c) A pilot program staff member, volunteer, or participant is not immune from criminal prosecution for:

1. The possession of needles or syringes that are not a part of the pilot program; or

2. Redistribution of needles or syringes in any form, if acting outside the pilot program.

(d) The pilot program shall collect data for annual and final reporting purposes, which shall include information on the number of participants served, the number of needles and syringes exchanged and distributed, the demographic profiles of the participants served, the number of participants entering drug counseling and treatment, the number of participants receiving HIV, AIDS, or viral hepatitis testing, and other data deemed necessary for the pilot program. However, personal identifying information may not be collected from a participant for any purpose.

(e) State funds may not be used to operate the pilot program. The pilot program shall be funded through grants and donations from private resources and funds.

(f) The pilot program shall expire July 1, 2019, or, if operated by a designee, 5 years after the entity is designated. Six months before the pilot program expires, the Office of Program Policy Analysis and Government Accountability shall submit a report to the President of the Senate and the Speaker of the House of Representatives that includes the data collection requirements established in this subsection; the rates of HIV, AIDS, viral hepatitis, or other blood-borne diseases before the pilot program began and every subsequent year thereafter; and a recommendation on whether to continue the pilot program.

(g) The department may adopt and develop rules to administer this subsection.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 595 The Council on the Social Status of Black Men and Boys
SPONSOR(S): Government Operations Subcommittee; Civil Justice Subcommittee; Williams and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Government Operations Subcommittee	10 Y, 0 N, As CS	Stramski	Williamson
3) Judiciary Committee		Ward	Havlicak

SUMMARY ANALYSIS

The Council on the Social Status of Black Men and Boys (Council) was established within the Department of Legal Affairs in 2006. The Council consists of 19 appointed volunteer members who serve four year terms. The Council studies conditions affecting black men and boys, proposes measures to alleviate underlying conditions affecting black men and boys, and develops local Councils. The Office of the Attorney General provides staff and administrative support to the Council. In addition to its mandatory duties, the Council may:

- Access public data;
- Request public officials and agencies for assistance and research;
- Seek state and federal funds and grants;
- Accept gifts for defraying costs of administration; and
- Work with or request information from Florida's traditionally black colleges and universities.

The bill:

- Provides for removal of a member of the Council for absences;
- Directs the Council to perform some of those functions which were previously discretionary;
- Adds to the discretionary duties of the Council;
- Removes the Council's authority to make requests directly to the Joint Legislative Auditing Committee and the Office of Economic Demographic Research for assistance with research;
- Provides that the Council may reimburse per diem and travel expenses for individuals and entities that make presentations to the Council regarding the Council's mission or strategic vision; and
- Repeals the statute establishing a direct-support organization for the Council.

The bill does not appear to have a fiscal impact on local governments. The bill may have an undetermined but likely minimal recurring negative fiscal impact on state expenditures applicable to state government. *See* FISCAL COMMENTS.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Council on the Social Status of Black Men and Boys (Council) was established within the Department of Legal Affairs in 2006.[1] The Council consists of 19 appointed volunteer[2] members who serve a four year term.[3] A quorum consists of 11 members of the Council.[4] The Council is directed by statute to:

- Study conditions affecting black men and boys;
- Propose measures to alleviate negative underlying conditions affecting black men and boys;
- Study other topics as suggested by the Legislature or chair of the Council;
- Receive suggestions pertinent to applicable issues;
- Monitor the direct-support organization established by statute;[5] and
- Develop a strategic program and funding initiative to establish local councils.[6]

The Council may also:

- Access public data;[7]
- Request that public officials and agencies provide assistance and research;[8]
- Seek state and federal funds and grants,
- Accept gifts to defray costs of administration;[9] and
- Work with or request information from Florida's traditionally black colleges and universities.[10]

The Office of the Attorney General provides staff and administrative support to the Council.[11] Council members are entitled to reimbursement for travel and per diem expenses.[12] The Council is subject to public records and meetings laws,[13] and its members must file a disclosure of financial interests.[14]

Effect of Bill

The bill provides that a member of the Council is deemed to have vacated his or her position if the member has three consecutive unexcused absences, defined as failure to notify the chair in advance, or the member is absent from at least half of the Council meetings over a twelve month period.

The bill directs the Council to perform some of those functions that were previously discretionary, directing the Council to:

- Access public records held by any state department or agency;
- Request information from the state or any political subdivision, municipal corporation, public officer, or governmental department thereof;

---

[1] Section 16.615, F.S.
[2] Section 16.615(1), F.S.
[3] Section 16.615(2), F.S.
[4] Section 16.615(8), F.S.
[5] Section 16.616, F.S.
[6] Section 16.615(4), F.S.
[7] Section 16.615(5)(a), F.S.
[8] Section 16.615(5)(b)(c)(d), F.S.
[9] Section 16.615(5)(e), F.S
[10] Section 16.615(5)(f), F.S
[11] Section 16.615(6), F.S
[12] Section 16.615(10), F.S
[13] Section 16.615(11), F.S
[14] Section 16.615(12), F.S., citing s. 112.3145, F.S.

- Apply for and accept funds, grants, gifts, and services from the state, federal government, or other sources for administrative costs and for Council duties; and
- Work directly with, or request information from, Florida's historically black colleges and universities.

The bill removes the Council's authority to make direct requests to the Joint Legislative Auditing Committee[15] for assistance with research and monitoring of the outcomes provided by the Office of Program Policy Analysis and Government Accountability, [16] and the authority to request through member legislators research assistance from the Office of Economic and Demographic Research. [17]

The bill adds to the discretionary duties of the Council by providing that it may:
- Identify initiatives and programs that support the Council's mission and strategic vision;
- Study other topics suggested by the Legislature or as directed by the chair of the Council; and
- Subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs for the Council to:
    - Conduct additional research and studies that support the Council's vision and strategic mission;
    - Provide information and assistance in the establishment of local Councils on the Social Status of Black Men and Boys; and
    - Host an annual statewide conference.

The bill also:
- Provides that the Council may present its strategic findings at an annual statewide conference; and
- Provides that the Council may reimburse per diem and travel expenses for individuals and entities that make presentations to the Council regarding the Council's mission or strategic vision at the same rate provided for public employees under s. 112.061, F.S. Strategic issues include:
    - Removing the barriers to healthy lifestyles, health care, and community-based support and prevention services;
    - Ensuring a commitment to education and lifelong learning;
    - Addressing the disproportionately high rate of unemployment and unstable economic conditions;
    - Addressing crime prevention and criminal justice issues that adversely and disproportionately affect black men and boys; and
    - Promoting community awareness, leadership, and sustainable community and agency partnerships.

The bill repeals s. 16.616, F.S., which directed the Department of Legal Affairs to establish a direct-support organization to support the Council's goals. According to the Office of the Attorney General, the organization was not established.[18] The repealed statute provides that in the event the organization is established and then ceases to exist, any moneys revert to the Department of Legal Affairs.[19]

The bill makes grammatical and stylistic changes that do not affect the meaning of the statute.

The bill has an effective date of July 1, 2014.

---

[15] Rule 4.1(1)(c), Joint Rules of the Florida Legislature.
[16] *See* s. 11.51, F.S.
[17] Rule 3.1(1)(a), Joint Rules of the Florida Legislature.
[18] As reported on February 11, 2014, by Rob Johnson, Director of Legislative Affairs for the Office of the Attorney General, Department of Legal Affairs.
[19] Section 16.616(2)(d), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 16.615, F.S., relating to Council on the Social Status of Black Men and Boys.

Section 2 repeals s. 16.616, F.S., relating to the direct-support organization.

Section 3 provides an effective date of July 1, 2014.

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 portion of the bill expanding per diem reimbursements could have a negative recurring fiscal impact on state expenditures. This amount may be minimal. *See* FISCAL COMMENTS.

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 direct economic impact on the private sector.

D. FISCAL COMMENTS:

Per diem change: The Office of the Attorney General did not provide an estimate of the additional cost of increasing the number of persons eligible for reimbursement of travel expenses. The office believes this additional expense can be absorbed within existing resources appropriated to the office for the benefit of the Council. It is unclear how additional expenses can be absorbed within an existing budget unless other expenses of the office are somehow reduced.[20]

Cooperation by other state agencies: The bill requires the Council to ask other agencies for cooperation in providing research materials. However, even without the changes made by this bill, the Council has existing authority to ask state agencies for assistance, and those agencies will not incur any financial cost unless they agree to provide the assistance. Accordingly, these portions of the bill do not appear likely to have a fiscal impact.

[20] *See supra*, fn. 18

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

Civil Justice Subcommittee
On February 11, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment repealed the statute creating the direct support organization of the Council established in s. 16.616, F.S., thus eliminating the organization.

Government Operations Subcommittee
On March 25, 2014, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments removed the provision reducing the number of members required to constitute a quorum, removed the requirement that the Council make direct requests to the Joint Legislative Auditing Committee for assistance with research and monitoring of the outcomes provided by the Office of Program Policy Analysis and Government Accountability, and removed the requirement that the Council request through member legislators research assistance from the Office of Economic and Demographic Research.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to the Council on the Social Status of Black Men and Boys; amending s. 16.615, F.S.; providing criteria for removal of a member of the council; revising the duties of the council; authorizing the council to identify specified initiatives and programs, study other topics suggested by the Legislature or as directed by the chair of the council, and, subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs to perform certain tasks; authorizing the council to present its findings and strategic issues at an annual statewide conference; providing for reimbursement for per diem and travel expenses for individuals and entities that make presentations to the council regarding the mission or strategic vision of the council; repealing s. 16.616, F.S., relating to a requirement that the department establish a direct-support organization; providing an effective date.

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

Section 1. Section 16.615, Florida Statutes, is amended to read:

16.615 Council on the Social Status of Black Men and Boys.—

(1) The Council on the Social Status of Black Men and Boys is established within the Department of Legal Affairs and shall consist of 19 members appointed as follows:

(a) Two members of the Senate who are not members of the same political party, appointed by the President of the Senate with the advice of the Minority Leader of the Senate.

(b) Two members of the House of Representatives who are not members of the same political party, appointed by the Speaker of the House of Representatives with the advice of the Minority Leader of the House of Representatives.

(c) The Secretary of Children and Families ~~Family Services~~ or his or her designee.

(d) The director of the Mental Health Program Office within the Department of Children and Families ~~Family Services~~ or his or her designee.

(e) The State Surgeon General or his or her designee.

(f) The Commissioner of Education or his or her designee.

(g) The Secretary of Corrections or his or her designee.

(h) The Attorney General or his or her designee.

(i) The Secretary of Management Services or his or her designee.

(j) The executive director of the Department of Economic Opportunity or his or her designee.

(k) A businessperson who is an African American, as defined in s. 760.80(2)(a), appointed by the Governor.

(l) Two persons appointed by the President of the Senate

who are not members of the Legislature or employed by state government. One of the appointees must be a clinical psychologist.

(m) Two persons appointed by the Speaker of the House of Representatives who are not members of the Legislature or employed by state government. One of the appointees must be an Africana studies professional.

(n) The deputy secretary for Medicaid in the Agency for Health Care Administration or his or her designee.

(o) The Secretary of Juvenile Justice or his or her designee.

(2) Each member of the council shall be appointed to a 4-year term; however, for the purpose of providing staggered terms, of the initial appointments, 9 members shall be appointed to 2-year terms and 10 members shall be appointed to 4-year terms. A member of the council may be removed at any time by the member's appointing authority, who shall fill the vacancy on the council. A member of the council is deemed to have vacated his or her position on the council and the member's appointing authority shall fill the vacated position if:

(a) The member has three consecutive unexcused absences. As used in this paragraph, the term "unexcused absence" means the member's failure to notify the chair that the member will not be present at a meeting of the council; or

(b) The member is absent for at least 50 percent of the council meetings within a 12-month period.

(3)(a) At the first meeting of the council each year, the members shall elect a chair and a vice chair.

(b) A vacancy in the office of chair or vice chair shall be filled by vote of the remaining members.

(4)~~(a)~~ The council shall:

(a) Make a systematic study of the conditions affecting black men and boys, including, but not limited to, homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death rates, disparate annual income levels, school performance in all grade levels, including postsecondary levels, and health issues.

(b) ~~The council shall~~ Propose measures to alleviate and correct the underlying causes of the conditions described in paragraph (a). These measures may consist of changes to the law or systematic changes that can be implemented without legislative action.

~~(c) The council may study other topics suggested by the Legislature or as directed by the chair of the council.~~

(c)~~(d)~~ ~~The council shall~~ Receive suggestions or comments pertinent to the applicable issues from members of the Legislature, governmental agencies, public and private organizations, and private citizens.

~~(e) The council shall monitor outcomes of the direct-support organization created pursuant to s. 16.616.~~

(d)~~(f) The council shall~~ Develop a strategic program and funding initiative to establish local Councils on the Social

Status of Black Men and Boys.

(e) Access data held by any state department or agency, which is otherwise a public record.

(f) Request information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department thereof.

(g) Apply for and accept funds, grants, gifts, and services from the state, the Federal Government, or any of its agencies, or any other public or private source for the purpose of defraying clerical and administrative costs as may be necessary for carrying out its duties under this section.

(h) Work directly with, or request information and assistance on issues pertaining to education from, this state's historically black colleges and universities.

(5) The council may:

(a) Identify initiatives and programs that support the council's mission and strategic vision.

(b) Study other topics suggested by the Legislature or as directed by the chair of the council.

(c) Subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs for the council to:

1. Conduct additional research and studies that support the council's mission and strategic vision.

2. Provide information and assistance in the establishment of local Councils on the Social Status of Black Men and Boys.

3. Host an annual statewide conference as provided in paragraph (9)(a).

~~(a) Access data held by any state departments or agencies, which data is otherwise a public record.~~

~~(b) Make requests directly to the Joint Legislative Auditing Committee for assistance with research and monitoring of outcomes by the Office of Program Policy Analysis and Government Accountability.~~

~~(c) Request, through council members who are also legislators, research assistance from the Office of Economic and Demographic Research within the Florida Legislature.~~

~~(d) Request information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department thereof.~~

~~(e) Apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying clerical and administrative costs as may be necessary for carrying out its duties under this section.~~

~~(f) Work directly with, or request information and assistance on issues pertaining to education from, Florida's historically black colleges and universities.~~

(6) The Office of the Attorney General shall provide staff and administrative support to the council.

(7) The council shall meet quarterly and at other times at the call of the chair or as determined by a majority of council

members and approved by the Attorney General.

(8) Eleven of the members of the council constitute a quorum, and an affirmative vote of a majority of the members present is required for final action.

(9)(a) The council shall issue an ~~its first~~ annual report by ~~December 15, 2007, and by~~ December 15 of each ~~following~~ year, stating the findings, conclusions, and recommendations of the council. The council shall submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs ~~chairpersons~~ of the standing committees of jurisdiction in each house ~~chamber~~. The council may also present its findings and its strategic issues regarding the status of black men and boys at an annual statewide conference hosted by the council. The strategic issues include the following:

1. Removing the barriers to healthy lifestyles, health care, and community-based support and prevention services.

2. Ensuring a commitment to education and lifelong learning.

3. Addressing the disproportionately high rate of unemployment and unstable economic conditions.

4. Addressing crime prevention and criminal justice issues that adversely and disproportionately affect black men and boys.

5. Promoting community awareness, leadership, and sustainable community and agency partnerships.

(b) The initial report must include the findings of an

investigation into factors causing black-on-black crime from the perspective of public health related to mental health, other health issues, cultural disconnection, and cultural identity trauma.

(10) Members of the council shall serve without compensation. Members are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061. State officers and employees shall be reimbursed from the budget of the agency through which they serve. Other members may be reimbursed by the Department of Legal Affairs. The council may also reimburse per diem and travel expenses at the same rate provided for public employees under s. 112.061 for individuals and entities that make presentations to the council regarding the council's mission or strategic vision. These individuals and entities shall be paid from funds appropriated to the council for that purpose.

(11) The council and any subcommittees it forms are subject to ~~the provisions of~~ chapter 119, related to public records, and ~~the provisions of~~ chapter 286, related to public meetings.

(12) Each member of the council who is not otherwise required to file a financial disclosure statement pursuant to s. 8, Art. II of the State Constitution or s. 112.3144~~,~~ must file a disclosure of financial interests pursuant to s. 112.3145.

Section 2. Section 16.616, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 659 Protective Orders
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Cox	Havlicak

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking (specified acts of violence) may obtain a court injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. The court can enforce a violation of an injunction against specified acts of violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

The bill amends various provisions relating to injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking. Specifically, the bill:

- Requires the effectiveness of a temporary injunction to extend until a final injunction is served upon the respondent;
- Provides that a respondent violates the terms of the injunction if the respondent willfully goes to, or is within 500 feet of a specified place frequented regularly by the petitioner or any named family or household member; and
- Provides that a respondent violates the terms of the final injunction against stalking or cyberstalking, or repeat, dating or sexual violence by possessing a firearm or ammunition.

The bill expands when an officer may arrest a person without a warrant to include cases that involve acts of domestic, repeat, dating, or sexual violence, stalking or cyberstalking, and child abuse injunction violations.

The bill may have a negative jail bed impact on local governments because it increases the number of potential defendants subject to misdemeanor penalties.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence[1] or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.[2] The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.[3] A hearing must be set at the earliest possible time after a petition is filed,[4] and the respondent must be personally served with a copy of the petition.[5] At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.[6]

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.[7,8] Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.[9] The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.[10]

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,[11] dating violence,[12] and sexual violence.[13] This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

---

[1] Section 741.28, F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

[2] Section 741.30, F.S.

[3] Section 741.30(3), F.S.

[4] Section 741.30(4), F.S.

[5] *Id.*

[6] Section 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. Section 741.30(6)(c) and (10), F.S.

[7] The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. Section 741.30(5), F.S.

[8] The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing *or* has received reasonable notice of the hearing. Section 741.30(5)(b), F.S.

[9] Section 741.30(5)(c), F.S.

[10] The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. Section 741.30(5)(c), F.S.

[11] Section 784.046(1)(b), F.S., defines "repeat violence" to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(a), F.S., defines "violence" to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

[12] Section 784.046(1)(d), F.S., defines "dating violence" to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The following factors come into play when determining the existence of such a relationship: 1. a dating relationship must have existed within the past six months; 2. the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3. the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.

Stalking and Cyberstalking
Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

All three statutes are silent as to whether a temporary injunction may remain in effect past the 15 day time limit to allow a final injunction that is issued by the court to be served on the respondent.

Effect of the Bill
The bill amends ss. 741.30 (domestic violence), 784.046 (repeat, dating, or sexual violence), and 784.0485, F.S. (stalking and cyberstalking), to require the effectiveness of a temporary injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking to extend until a final injunction is served upon the respondent. The bill further provides that a full hearing will be set for a date no later than the date when the ex parte temporary injunction ceases to be effective.

Violation of an Injunction against Specified Acts of Violence
A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking, if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;[14]
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.[15]

A court can enforce a violation of an injunction through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.[16,17]

Effect of the Bill
The bill amends ss. 741.31 (domestic violence), 784.047 (repeat, dating, or sexual violence), and 784.0487 (stalking and cyberstalking), F.S., providing a respondent violates the terms of an injunction if the respondent willfully goes to, or is within 500 feet of a specified place frequented regularly by the petitioner or any named family or household member, rather than a place frequented by both the petitioner and a family or household member.

The bill amends ss. 784.047 and 784.0487, F.S., to make it a first degree misdemeanor for a person to violate a repeat, dating, or sexual violence injunction, or a stalking or cyberstalking injunction by having

---

[13] Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: 1. Sexual battery; 2. A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child; 4. Sexual performance by a child; or 5. Any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.
[14] The terms of an injunction against stalking or cyberstalking cannot be violated by a respondent refusing to vacate the parties' shared dwelling. Section 784.0487(4), F.S.
[15] Sections 741.31(4)(a), 784.047, and 784.0487, F.S.
[16] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[17] Sections 741.30(9), 784.046(9), and 784.0485(9), F.S.

in his or her care, custody, possession, or control any firearm or ammunition.[18] This mirrors language currently found in s. 741.31, F.S., which addresses violations of domestic violence injunctions.

Lawful Arrest by an Officer without a Warrant

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. LEOs that do not witness the offense must obtain an arrest warrant.[19]

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include instances in which there is probable cause to believe that a person:

- Possessed a firearm or ammunition when such person is subject to a final injunction against domestic violence, stalking, or cyberstalking;[20]
- Committed a criminal act that violates the terms of an injunction against domestic, repeat, dating, or sexual violence;[21] or
- Committed an act of domestic or dating violence.[22]

Section 901.15, F.S., also provides LEOs civil immunity from any actions taken when effectuating a good faith arrest of a person believed to have:

- Committed an act of domestic or dating violence; or
- Violated the terms of an injunction against domestic, repeat, dating, or sexual violence.

Effect of the Bill

The bill amends s. 901.15, F.S., to permit a LEO to arrest a person without a warrant when there is probable cause to believe that a person has committed:

- A criminal act that violates the terms of an injunction against:
  - An act of child abuse occurring after a protective investigation is initiated;[23] or
  - Stalking or cyberstalking; or
- An act of repeat or sexual violence, stalking or cyberstalking, or child abuse.[24]

The bill expands the civil immunity provision to apply to a LEO who effectuates a good faith arrest of a person believed to have:

- Committed an act of repeat or sexual violence, stalking or cyberstalking, or child abuse; or
- Violated the terms of an injunction against:
  - An act of child abuse occurring after a protective investigation is initiated; or
  - Stalking or cyberstalking.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

---

[18] This is also a violation of s. 790.233, F.S., which prohibits a person from having in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, or from committing acts of stalking or cyberstalking.

[19] Section 901.15, F.S.

[20] Section 901.15(6), F.S., in accordance with s. 790.233, F.S.

[21] This includes injunctions issued in accordance with ss. 741.30 or 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S. Additionally, the arrest may be made over the objection of the petitioner, if necessary. Section 901.15(6), F.S.

[22] Section 901.15(7), F.S., further provides that the arrest may be made without consent of the victim.

[23] This injunction is governed by s. 39.504, F.S.

[24] As provided in s. 39.01, F.S.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 3. Amends s. 784.0485, F.S., relating to stalking; inunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 4. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

Section 5. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 6. Amends s. 790.233, F.S., relating to possession of a firearm or ammunition prohibited when person is subject to an injunction against committing acts of domestic violence, stalking, or cyberstalking; penalties.

Section 7. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8. Provides an effective date of October 1, 2014.

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 may have a negative jail bed impact on local governments because it increases the number of potential defendants subject to misdemeanor penalties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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

On March 5, 2014, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes all sections amending ch. 493, F.S., related to private investigators conducting certain records searches;
- Removes all sections providing a respondent is subject to prosecution or contempt proceedings for violating an injunction if the respondent directs a third party to commit specified acts that result in a violation of the injunction;
- Provides a person violates a final injunction for protection against repeat, dating, or sexual violence by possessing any firearm or ammunition; and
- Provides consistency between sections that address injunctions for protection and violations of injunctions against domestic violence; repeat, dating, and sexual violence; and stalking and cyberstalking.

On March 19, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that a temporary injunction is effective for not more than 15 days unless after a full hearing, a final injunction is issued on the same case, then the temporary injunction remains in effect until the final injunction is served.
- Provides that a full hearing will be set for a date no later than the date when the ex parte temporary injunction ceases to be effective.
- Provides the need to obtain service of process constitutes good cause, and a temporary injunction that is already served must be extended if necessary, so that it remains in full force and effect during any period of continuance.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

A bill to be entitled

An act relating to protective orders; amending ss. 741.30, 784.046, and 784.0485, F.S.; extending the effectiveness of certain temporary injunctions in domestic violence, repeat violence, sexual violence, dating violence, or stalking proceedings in certain circumstances; amending ss. 784.047 and 784.0487, F.S.; providing that it is unlawful for a person to violate a final injunction for protection against repeat violence, dating violence, sexual violence, stalking, or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition; providing penalties; amending s. 790.233, F.S.; conforming provisions to changes made by the act; amending s. 901.15, F.S.; expanding situations in which an arrest without a warrant is lawful to include probable cause of repeat violence, sexual violence, stalking, cyberstalking, or child abuse; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary

injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days unless, after a full hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party. The need to obtain service of process constitutes good cause. A temporary~~, which shall include a continuance to obtain service of process. Any~~ injunction that is already served must ~~shall~~ be extended, if necessary, so that it remains ~~to remain~~ in full force and effect during any period of continuance.

Section 2. Paragraph (c) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days and~~. However,~~ an ex parte temporary injunction granted under subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration unless, after a full hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of the ~~ex parte injunction and the full~~ hearing before or during a hearing~~,~~ for good cause shown by any party. The need to obtain service of process constitutes good cause. A temporary injunction that is already served must be extended, if necessary, so that it remains in full force and effect during any period of continuance.

Section 3. Paragraph (c) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days unless, after a full

hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided in this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party. The need to obtain service of process constitutes good cause. A temporary~~, which shall include a continuance to obtain service of process. An~~ injunction that is already served must ~~shall~~ be extended, if necessary, so that it remains ~~to remain~~ in full force and effect during any period of continuance.

Section 4. Section 784.047, Florida Statutes, is amended to read:

784.047 Penalties for violating protective injunction against violators.—

(1) A person who willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence, issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

(a) ~~(1)~~ Refusing to vacate the dwelling that the parties share;

(b) ~~(2)~~ Going to, or being within 500 feet of, the petitioner's residence, school, or place of employment, or a specified place frequented regularly by the petitioner or ~~and~~

any named family or household member;

(c) ~~(3)~~ Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;

(d) ~~(4)~~ Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;

(e) ~~(5)~~ Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

(f) ~~(6)~~ Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

(g) ~~(7)~~ Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

(h) ~~(8)~~ Refusing to surrender firearms or ammunition if ordered to do so by the court~~.~~

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who violates a final injunction for protection against repeat violence, sexual violence, or dating violence by having in his or her care, custody, possession, or control any firearm or ammunition violates s. 790.233 and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Paragraph (a) of subsection (4) of section 784.0487, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

784.0487 Violation of an injunction for protection against stalking or cyberstalking.—

(4) A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

(a) Going to, or being within 500 feet of, the petitioner's residence, school, or place of employment, or a specified place frequented regularly by the petitioner, ~~and~~ any named family members, or individuals closely associated with the petitioner;

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) A person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition violates s. 790.233 and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Subsection (1) of section 790.233, Florida Statutes, is amended to read:

790.233 Possession of firearm or ammunition prohibited

when person is subject to an injunction against committing acts of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking; penalties.—

(1) A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of:

(a) Domestic violence, as issued under s. 741.30;

(b) Repeat violence, dating violence, or sexual violence, as issued under s. 784.046; or ~~from committing acts of~~

(c) Stalking or cyberstalking, as issued under s. 784.0485.

Section 7. Subsections (6) and (7) of section 901.15, Florida Statutes, are amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 784.0487 which violates an injunction for protection entered pursuant to s. 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of child abuse as provided in s. 39.01; an act

of domestic violence~~,~~ as defined in s. 741.28; an act of~~, or~~ dating violence, repeat violence, or sexual violence as provided in s. 784.046; or an act of stalking or cyberstalking as provided in s. 784.0485. The decision to arrest does ~~shall~~ not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under s. 39.504, s. 741.31(4), ~~or~~ s. 784.047, or s. 784.0487, or pursuant to a foreign order of protection accorded full faith and credit pursuant to s. 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

Section 8. This act shall take effect October 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Mayfield offered the following:

Amendment

Remove lines 23-91 and insert:

Section 1. Paragraph (c) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days. However, if a final injunction is issued, but has not been served on the respondent, the temporary injunction remains in full force and effect until the final injunction is served on the respondent.

In no event shall the temporary injunction extend beyond the expiration date of the final injunction, if such a date is designated.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of a ~~the~~ hearing, before or during the ~~a~~ hearing, for good cause shown by any party. The need to obtain service of process constitutes good cause. An ~~, which shall include a continuance to obtain service of process. Any~~ injunction shall be extended so that it remains ~~if necessary to remain~~ in full force and effect during any period of continuance.

Section 2. Paragraph (c) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days. An ~~However, an~~ ex parte temporary injunction granted under subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration. However, if a final injunction is issued, but has not been served on the respondent, the temporary injunction remains in full force and effect until

the final injunction is served on the respondent. In no event shall the temporary injunction extend beyond the expiration date of the final injunction, if such a date is designated.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of a ~~the ex parte injunction and the full~~ hearing, before or during the ~~a~~ hearing, for good cause shown by any party. The need to obtain service of process constitutes good cause. An injunction shall be extended so that it remains in full force and effect during any period of continuance.

Section 3. Paragraph (c) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days. However, if a final injunction is issued, but has not been served on the respondent, the temporary injunction remains in full force and effect until the final injunction is served on the respondent. In no event shall the temporary injunction extend beyond the expiration date of the final injunction, if such a date is designated.

(d) A full hearing, as provided in this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of a ~~the~~ hearing, before or during the ~~a~~ hearing for good cause shown by any party. The need to obtain service of process constitutes good cause~~, which shall include a continuance to obtain service of process~~. An injunction shall be extended so that it remains ~~if necessary to remain~~ in full force and effect during any period of continuance.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Mayfield offered the following:

Amendment (with title amendment)

Remove line 199 and insert:

Section 8. Paragraph (b) of subsection (1) of section 903.047, Florida Statutes, is amended to read:

903.047 Conditions of pretrial release.—

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant shall:

(b) Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure. This condition becomes effective immediately upon order of the court.

Section 9. This act shall take effect October 1, 2014.

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

Remove lines 2-18 and insert:

An act relating to the protection of crime victims; amending ss. 741.30, 784.046, and 784.0485, F.S.; extending the effectiveness of certain temporary injunctions in domestic violence, repeat violence, sexual violence, dating violence, or stalking proceedings in certain circumstances; amending ss. 784.047 and 784.0487, F.S.; providing that it is unlawful for a person to violate a final injunction for protection against repeat violence, dating violence, sexual violence, stalking, or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition; providing penalties; amending s. 790.233, F.S.; conforming provisions to changes made by the act; amending s. 901.15, F.S.; expanding situations in which an arrest without a warrant is lawful to include probable cause of repeat violence, sexual violence, stalking, cyberstalking, or child abuse; amending s. 903.047, F.S.; providing the condition of pretrial release prohibiting a defendant from contacting the victim becomes effective immediately upon order of the court; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 685 Business Organizations
SPONSOR(S): Civil Justice Subcommittee; Rooney; Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
3) Judiciary Committee		Ward	Havlicak

SUMMARY ANALYSIS

Florida corporations are regulated by the Florida Business Corporation Act and the Florida Not For Profit Corporation Act. These two acts define the basic terms employed by Florida law in regulating corporations. The directors of a corporation established for profit are duty-bound to manage corporate assets for profit. A not for profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.

There is no provision in the law for a profit-making corporation which considers a social purpose or benefit along with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.

The bill creates two new types of corporations called the "social purpose corporation" and the "benefit corporation." Social purpose and benefit corporations protect management for considering the use of corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not for profit corporations. The new forms of corporation are similar; the primary difference being that a social purpose corporation has a specified social purpose or purposes designated in advance, whereas a benefit corporation is created for a general public benefit in a manner selected by management and assessed by a third-party standard.

The name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership must be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term "distinguishable" is not defined by any of these statutes. The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Corporations

Florida corporations are regulated by the Florida Business Corporation Act[1] and the Florida Not For Profit Corporation Act.[2] These two acts define the basic terms employed by Florida law in regulating corporations, their shareholders and officers.[3]

The term "corporation" presumes a corporation established for profit for purposes of the Florida Business Corporation Act.[4] However, a corporation may be established for any lawful purpose, including[5] purposes other than profit, if the articles establish a not for profit corporation.[6]

In both types of corporations, bylaws establish guidelines for the management of the entity.[7] A corporation established for profit appoints officers who then have a fiduciary duty to the shareholders of the corporation for use of the corporate assets.[8] In a corporation for profit, the directors are duty bound to manage those assets for profit.[9] A not for profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.[10]

There is no provision in the law for a profit making corporation which considers a social purpose or benefit as equal in importance with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.[11] This hurdle is overcome by the concept of the "social purpose" and the "benefit" corporation, each of which may focus on societal benefit over maximizing profit, with accountability to shareholders for both goals.

Social Purpose and Benefit Corporations

Social purpose and benefit corporations protect directors and officers who use corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not for profit corporations. Florida does not recognize such corporations, but other states do.

---

[1] 8A Fla. Jur 2d Business Relationships s. 1, citing s. 607.0101, et seq., F.S.
[2] 8A Fla. Jur 2d Business Relationships s. 1, citing s. 617.01011, et seq., F.S.
[3] 8A Fla. Jur 2d Business Relationships s. 1.
[4] Section 607.01401(5), F.S.
[5] Section 607.0301, F.S.
[6] Section 617.0301, F.S.
[7] 8A Fla. Jur 2d Business Relationships s. 52.
[8] 8A Fla. Jur 2d Business Relationships s. 285.
[9] Leo E. Stine, *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV 135 (2012).
[10] Section 617.0301, F.S.
[11] In 1917, Henry Ford declared, "My ambition is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business." After shareholders sued Mr. Ford, the court determined that the profits would be paid to shareholders. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (MI 1919).

Names of Business Entities

Chapters 605,[12] 607,[13] 617,[14] and 620,[15] F.S., require the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term "distinguishable" is not defined by any of these statutes.

Effect of the Bill

Corporations

The bill amends ch. 607, F.S., to provide for the creation of two new business entity types designated as "social purpose" and "benefit" corporations. The bill also divides ch. 607, F.S., into Parts, I, II, and III. Part I is entitled "Corporations," and addresses matters concerning all three types of for profit corporations, including historic for profit corporations, social purpose, and benefit corporations. Part II is entitled, "Social Purpose Corporations," and Part III is entitled, "Benefit Corporations." The bill provides that these new entities may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

Social Purpose Corporations

A social purpose corporation has the purpose of creating a public benefit. A "public benefit" is defined in the bill as a "positive effect, or the minimization of negative effects taken as a whole, on the environment or on one or more categories of persons or entities other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, from the business and operations of a social purpose corporation." They may be created for the purpose of pursuing or creating one or more public benefits which may be specific in nature.

The bill provides that in order to qualify the articles of incorporation must provide that the corporation is a social purpose corporation under part II of ch. 607, F.S. The bill provides that the articles of incorporation of a social purpose corporation may identify one or more specific public benefits as its purpose. The social purpose corporation may amend or delete the purpose statement, as long as the amendment is adopted by the minimum status vote.

The bill provides that the creation of a public benefit is deemed to be in the best interest of the social purpose corporation. Since the social purpose corporation has the purpose of creating a public benefit, the management does not breach its fiduciary duty by making the corporation's beneficial purpose a priority over maximizing profit. This protects the directors and officers from action taken by shareholders for prioritizing social benefit over profit.

An existing corporation may elect to change its status to a social purpose corporation by amending its articles of incorporation, by merger, or by share exchange. The change must be adopted by its shareholders. The amendment must be adopted by a "minimum status vote," defined in the statute.[16] The value of shares held is taken into consideration by the provisions of s. 607.1302, F.S., which is amended by the bill to provide that a shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of conversion of

[12] Section 605.0112(1)(b), F.S.
[13] Section 607.0401(4), F.S.
[14] Section 617.0401(1)(e), F.S.
[15] Section 620.1108(4), F.S.
[16] A "minimum status vote" is the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote.

a corporation to a social purpose or benefit corporation. Likewise, a social purpose corporation may terminate its standing by the same means.

Definitions

The bill provides definitions for terms particular to the new entities. Most of these are more fully described in their context below but introduced here for background. The bill provides that:

- "Benefit director" means a director who must not have an interest in the corporation, and who gives an annual report of his or her opinion on whether the organization is meeting its stated goals;
- "Benefit enforcement proceeding," analogous to a shareholder derivative action, means an action or claim wherein shareholders can hold a social purpose corporation accountable to its stated public benefit;
- "Independent" means "not having a material relationship" with the social purpose corporation or any subsidiary;
- "Minimum status vote" means the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote;
- "Public benefit" means a positive effect, or the minimization of negative effects taken as a whole, on the environment, persons, or entities from the business and operations of a social purpose corporation;
- "Social purpose corporation" means a corporation that is formed or has elected to become subject to the statute, the status of which as a social purpose corporation has not been terminated;
- "Specific public benefit" means a benefit identified as a purpose of the social purpose corporation which is set forth in the articles of incorporation and is consistent with a public benefit;
- "Subsidiary" means, in relation to a person other than an individual, an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests; and
- "Third-party standard" means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business.

Directors of Social Purpose Corporations

The bill provides that in any action or inaction, directors must take into consideration both the shareholders and the ability of the social purpose corporation to accomplish its public benefit goal. The bill provides that in any action or inaction, directors may take into consideration:

- The employees and workforce of the corporation, its subsidiaries and suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit;
- Community and societal factors where the social purpose corporation, its subsidiaries, or suppliers are located;
- The local and global environment;
- The short and long term interests of the corporation; and
- Other pertinent factors of the interests of any other group that they deem appropriate.

The bill also provides that:

- Directors are not required to give equal weight to the interests of any particular person or group listed above unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight;
- Except as provided in the articles of incorporation, a director is not personally liable for monetary damages for failure of the corporation to pursue or create a specific public benefit; and

- Except as provided in the articles of incorporation, a director does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation.

The bill provides for a new office entitled the "benefit director," which may be qualified and described in the articles of incorporation or bylaws. The bill provides that the benefit director has all the powers, duties, rights, and immunities of other directors, plus others additionally outlined in the bill. The benefit director is elected, and may be removed as set out in the bill. The benefit director may also serve as the benefit officer, described below.

Unless the articles of incorporation or bylaws provide otherwise, the benefit director must include in the annual benefit report to shareholders his or her opinion on the following:

- Whether the social purpose corporation in all material respects acted in accordance with its public benefit purpose and any specific public benefit purpose during the period covered by the report;
- Whether the directors and officers met the standards of conduct as set forth in the bill; and
- Whether the social purpose corporation or its directors or officers failed to comply with the standards of conduct toward the shareholders and the stated public benefit, including a written description of the ways in which the social purpose corporation or its directors or officers failed to comply.

The benefit director of a professional corporation[17] is not required to be "independent."[18]

Officers of Social Purpose Corporations

The bill provides standards of conduct for officers of social purpose corporations that shield them from liability in balancing the social purpose of the corporation with the shareholders' interests:

- If an officer of a social purpose corporation reasonably believes that a matter may have a material effect on the ability of the corporation to create a public benefit or a specific public benefit identified in the articles of incorporation and the officer has discretion to act on the matter, the officer must consider the interests and factors provided in the statute on the same basis as the directors;
- The officer's consideration of the above interests and factors is not a violation of s. 607.0841, F.S., which provides that corporate officers have a duty to execute the purposes set out in the corporate bylaws as prescribed by the directors and authorized officers;
- Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages to the corporation or any other person for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit; and
- Except as provided in the articles of incorporation, an officer does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation arising from the status of the person as a beneficiary.

The bill provides that a social purpose corporation may designate an officer as the benefit officer. The benefit officer has the powers and duties set forth in the bylaws or determined by the board of directors, which may include, but are not limited to:

- Powers and duties relating to the public benefit purpose or a specific public benefit purpose of the corporation; and
- The duty to prepare the annual benefit report required by the bill.

---

[17] A professional corporation formed under ch. 621, F.S., is a corporation designed to have as its only shareholders other corporations, each of which renders professional services.

[18] The term "independent" is defined in the bill as "not having a material relationship with the corporation."

Rights of Action Against a Social Purpose Corporation

The bill does not provide any special immunities for social purpose corporations, but does provide remedies for internal disputes as with other corporations.

The bill provides that a "benefit enforcement proceeding" is a claim or action for the failure of a social purpose corporation to pursue or create a public benefit or a specific public benefit established in its articles of incorporation or a violation of any obligation, duty, or standard of conduct under the statute.

The bill provides that a benefit enforcement proceeding may be commenced directly by the corporation, a shareholder, a director, a person or group holding at least five percent interest, or by any other person specified in the articles of incorporation. No other person may bring an action or assert a claim against a social purpose corporation or its directors or officers for a failure to pursue or create a public benefit. Further, a social purpose corporation is not liable for monetary damages under the corporation statute for its failure to pursue or create a public benefit or a specific public benefit.

Annual Benefit Report of a Social Purpose Corporation

The bill provides that unless it is prepared by a benefit director or benefit officer, the board of directors must prepare an annual benefit report that includes the ways in which the social purpose was pursued, the benefit created, any hindrance to the pursuit of the benefit, and the process and rationale for changing to the third party standard, as applicable.

The bill provides the matters to be included and assessed if the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard.

The bill provides that if, during the year covered by an annual benefit report, a benefit director resigned from or refused to stand for reelection to his or her position or was removed from his or her position and he or she furnished written correspondence to the social purpose corporation concerning the circumstances surrounding his or her departure, that correspondence must be included as an exhibit in the annual benefit report.

The bill provides that the annual benefit report and the assessment of the performance of the social purpose corporation in the annual benefit report are not required to be audited or certified by a third-party standards provider.

Availability of Annual Benefit Report

The bill provides that each social purpose corporation must send its annual benefit report to each shareholder:

- Within 120 days after the end of the fiscal year of the social purpose corporation; or
- At the same time that the social purpose corporation delivers any other annual report to its shareholders.

The bill provides that a social purpose corporation must post each annual benefit report on the public portion of its website, if any, and it must remain posted for at least 3 years. If a social purpose corporation does not have a website, the corporation must provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

If a social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the social purpose corporation is located or, if no office is located in this state, the county in which its registered office is located may, after a

shareholder of the social purpose corporation requests a copy, summarily order the corporation to furnish the report. If the court orders the report to be furnished, the court may also order the social purpose corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in obtaining the order and otherwise enforcing his or her rights under this section.

Benefit Corporations

The bill creates Part III of ch. 607, F.S., to provide for the creation of a new business entity designated as the "benefit corporation." The bill provides that both the benefit corporation and the social purpose corporation may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

A benefit corporation is created for a broad purpose and it may pursue many societal and environmental factors simultaneously. The benefit corporation has all of the same provisions as the social purpose corporation with two major exceptions. First, a benefit corporation has the purpose of creating a "general public benefit." The bill defines a "general public benefit" as "a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation." Second, contained within the first, is the assessment using a third party standard for the annual benefit report, as defined in the bill.

As part of the purpose of creating a general public benefit, directors of benefit corporations must consider the effects of any action or inaction upon:

- The shareholders of the benefit corporation;
- The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit and any specific public benefit purposes of the benefit corporation;
- Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- The local and global environment;
- The short-term and long-term interests of the benefit corporation; and
- The ability of the benefit corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes, if any.

Names of Business Entities

The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State. The bill provides that the following do not render a name distinguishable:

- A suffix;
- A definite or indefinite article;
- The word "and" or the symbol "&;"
- The singular, plural or possessive form of a word;
- A recognized abbreviation of a root word; or
- A punctuation mark or symbol.

The bill amends chs. 605, 607, 617, and 620, F.S., to reflect the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement registered with

the Department of State, which, like fictitious name registrations, are merely registered with the Department of State for public notice purposes only.

The bill makes other conforming changes to the statutes.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 605.0112, F.S., relating to names.

Section 2 designates ss. 607.0101 through s. 607.193, F.S., as Part I of Chapter 607, F.S., entitled "CORPORATIONS."

Section 3 amends s. 607.0101, F.S., relating to short title.

Section 4 amends s. 607.0401, F.S., relating to corporate names.

Section 5 amends s. 607.1302, F.S, relating to right of shareholders to appraisal.

Section 6 designates ss. 607.501 through 607.513, F.S., as Part II of Chapter 607, F.S., entitled "SOCIAL PURPOSE CORPORATIONS."

Section 7 creates s. 607.501, F.S., relating to applications and effect of part.

Section 8 creates s. 607.502, F.S., relating to definitions.

Section 9 creates s. 607.503, F.S., relating to incorporation.

Section 10 creates s. 607.504, F.S., relating to election of social purpose corporations status.

Section 11 creates s. 607.505, F.S., relating to termination of social purpose corporation status.

Section 12 creates s. 607.506, F.S., relating to corporate purpose.

Section 13 creates s. 607.507, F.S., relating to standard of conduct for directors.

Section 14 creates s. 607.508, F.S., relating to benefit director.

Section 15 creates s. 607.509, F.S., relating to standard of conduct for officers.

Section 16 creates s. 607.510, F.S., relating to benefit officer.

Section 17 creates s. 607.511, F.S., relating to right of action.

Section 18 creates s. 607.512, F.S., relating to preparation of annual benefit report.

Section 19 creates s. 607.513, F.S., relating to availability of annual benefit report.

Section 20 designates ss. 607.601 through 607.613, F.S., as Part III of ch. 607, F.S., entitled "BENEFIT CORPORATIONS."

Section 21 creates s. 607.601, F.S., relating to application and effect of part.

Section 22 creates s. 607.602, F.S., relating to definitions.

Section 23 creates s. 607.603, F.S., relating to incorporation.

Section 24 creates s. 607.604, F.S., relating to election of benefit corporation status.

Section 25 creates s. 607.605, F.S., relating to termination of benefit corporation status.

Section 26 creates s. 607.606, F.S., relating to corporate purpose.

Section 27 creates s. 607.607, F.S., relating to standard of conduct for directors.

Section 28 creates s. 607.608, F.S., relating to benefit director.

Section 29 creates s. 607.609, F.S., relating to standard of conduct for officers.

Section 30 creates s. 607.610, F.S., relating to benefit officer.

Section 31 creates s. 607.611, F.S., relating to right of action.

Section 32 creates s. 607.612, F.S., relating to preparation of annual benefit report.

Section 33 creates s. 607.613, F.S., relating to availability of annual benefit report.

Section 34 amends s. 617.0401, F.S., relating to corporate name.

Section 35 amends s. 620.1108, F.S., relating to name.

Section 36 amends s. 48.091, F.S., relating to corporations; designation of registered agent and registered office.

Section 37 amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 38 amends s. 243.54, F.S., relating to powers of the authority.

Section 39 amends s. 310.171, F.S., relating to pilots may incorporate themselves.

Section 40 amends s. 310.181, F.S., relating to corporate powers.

Section 41 amends s. 329.10, F.S., relating to aircraft registration.

Section 42 amends s. 339.412, F.S., relating to powers of corporation.

Section 43 amends s. 420.101, F.S., relating to Housing Development Corporation of Florida; creation, membership, and purposes.

Section 44 amends s. 420.111, F.S., relating to Housing Development Corporation of Florida; additional powers.

Section 45 amends s. 420.161, F.S., relating to Housing Development Corporation of Florida; period of existence; method of dissolution.

Section 46 amends s. 440.02, F.S., relating to definitions.

Section 47 amends s. 440.386, F.S., relating to individual self-insurers' insolvency; conservation; liquidation.

Section 48 amends s. 609.08, F.S., relating to merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.

Section 49 amends s. 617.1908, F.S., relating to applicability of Florida Business Corporation Act.

Section 50 amends s. 618.221, F.S., relating to conversion into a corporation for profit.

Section 51 amends s. 619.04, F.S., relating to articles of incorporation.

Section 52 amends s. 624.430, F.S., relating to withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.

Section 53 amends s. 624.462, F.S., relating to commercial self-insurance funds.

Section 54 amends s. 624.489, F.S., relating to liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.

Section 55 amends s. 628.041, F.S., relating to applicability of general corporation statutes.

Section 56 amends s. 631.262, F.S., relating to transfers prior to petition.

Section 57 amends s. 636.204, F.S., relating to license required.

Section 58 amends s. 641.2015, F.S., relating to incorporation required.

Section 59 amends s. 655.0201, F.S., relating to service of process, notice, or demand on financial institutions.

Section 60 amends s. 658.23, F.S., relating to submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.

Section 61 amends s. 658.2953, F.S., relating to interstate branching.

Section 62 amends s. 658.30, F.S., relating to application of the Florida Business Corporation Act.

Section 63 amends s. 658.36, F.S., relating to changes in capital.

Section 64 amends s. 663.03, F.S., relating to applicability of the Florida Business Corporation Act.

Section 65 amends s. 663.04, F.S., relating to requirements for carrying on financial institution business.

Section 66 amends s. 663.301, F.S., relating to definitions.

Section 67 amends s. 663.306, F.S., relating to decision by office.

Section 68 amends s. 663.313, F.S., relating to ownership of stock.

Section 69 amends s. 718.111, F.S., relating to the association.

Section 70 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 71 amends s. 720.302, F.S., relating to purposes, scope, and application.

Section 72 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 73 amends s. 766.101, F.S., relating to medical review committee, immunity from liability.

Section 74 amends s. 865.09, F.S., relating to fictitious name registration.

Section 75 provides an effective date of July 1, 2014.

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.[19]

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:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

II. 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.

[19] The Department of State, 2014 Agency Legislative Bill Analysis for the companion bill, SB 654, indicates that some computer programming changes may be necessary to implement this bill, but that the cost can be absorbed within existing resources.

B. RULE-MAKING AUTHORITY:

Current law at s. 607.0130(4), F.S., gives the Department of State rulemaking power regarding regulation of corporations by reference to the corporations "act" which, under current law, refers to all of ch. 607, F.S. However this bill amends s. 607.0101, F.S., to provide that reference to the "act" only applies to Part I of revised ch. 607, F.S. It appears that the department may have no rulemaking power over parts II and III of ch. 607, F.S., as created by this bill. If the Legislature wishes to clearly give the department rulemaking power over parts II and III, the following amendment to s. 607.0130(4), F.S., is suggested:

> The Department of State shall have the power and authority reasonably necessary to enable it to administer this chapter ~~act~~ efficiently, to perform the duties herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this chapter ~~act~~.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The rationale for this alternative form of corporate enterprise has been described by two leading experts as follows:

> The sustainable business movement, impact investing, and social enterprise sectors are developing rapidly but are constrained by an outdated legal framework that is not equipped to accommodate for-profit entities whose social benefit purpose is central to their existence. The Benefit Corporation is the most comprehensive yet flexible legal entity devised to address the needs of entrepreneurs and investors and, ultimately, the general public. Benefit Corporations offer clear market differentiation, broad legal protection to directors and officers, expanded shareholder rights, and greater access to capital than current alternative approaches.[20]

As stated by another commentator:

> Social enterprises are entities dedicated to a blended mission of earning profits for owners and promoting social good. They are neither typical businesses, concentrated on the bottom line of profit, nor traditional charities....Their founders instead see value in blending both goals....Yet, these social entrepreneurs worry traditional organizational forms designed for either businesses or charities will constrain their ability to achieve the gains they see in blended mission enterprises.[21]

It is likely that the so called "green corporations" will receive the maximum benefit of this new type of entity.[22] "Advocates of the benefit corporation recognize that there is a risk of 'green-washing,' i.e. that corporations will use the social purpose or benefit corporation mantle to wrap themselves in a cloak of social goodness while failing to pursue meaningfully any beneficial societal goals. 'Green-washing' is a potential risk because directors of such corporations are only mandated to consider benefit goals, not implement them, nor is there any personal monetary liability imposed upon directors or officers who fail

---

[20] William H. Clark, Jr. and Larry Vranka, White Paper: The Need and Rationale for the Benefit Corporation (January 26, 2012). available at http://benefitcorp.net/storage/documents/The_Need_and_Rationale_for_Benefit_Corporations_April_2012.pdf [last visited February 15, 2014], and on file with the Florida House of Representatives Civil Justice Subcommittee.

[21] Dana Brakman Reiser, The Next Big Thing: Flexible-Purpose Corporations, Brooklyn Law School Legal Studies Research Papers (Oct. 2012), available at http://ssrn.com/abstract=2166474 [last visited February 15, 2014].

[22] Stuart R. Cohn, Stuart D. Ames, Gary Teblum, and James Glover, White Paper: Proposed Legislation To Amend Chapter 607, Florida Statutes to Provide for the Creation of Florida Social Purpose Corporation and a Florida Benefit Corporation, Memorandum of the Business Law Section of the Florida Bar (January 15, 2014), on file with the Florida House of Representatives Civil Justice Subcommittee.

to pursue or achieve such goals."[23] Shareholders and the transparent qualities required of these new corporations are designed to provide accountability as a balance to the risk of "green washing."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides conforming changes to match the bill to CS/SB 654 without substantive change. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

[23] *Id.*

A bill to be entitled

An act relating to business organizations; amending s. 605.0112, F.S.; providing additional exceptions regarding the requirement that limited liability company names be distinguishable from the names of other entities or filings; specifying differences in names which are not considered distinguishable; designating part I of ch. 607, F.S., entitled "Corporations"; amending s. 607.0101, F.S.; revising a provision to conform to changes made by the act; amending s. 607.0401, F.S.; providing additional exceptions regarding the requirement that corporate names be distinguishable; specifying differences in corporate names which are not considered distinguishable; amending s. 607.1302, F.S.; providing that the amendment of articles of incorporation or the merger, conversion, or share exchange of a social purpose or benefit corporation entitles the shareholders to appraisal rights; creating part II of ch. 607, F.S., entitled "Social Purpose Corporations"; creating s. 607.501, F.S.; providing application and effect; creating s. 607.502, F.S.; providing definitions; creating s. 607.503, F.S.; establishing requirements for the formation of a social purpose corporation; creating s. 607.504, F.S.; providing procedures for an existing corporation to become a

social purpose corporation; creating s. 607.505, F.S.; providing procedures for the termination of a social purpose corporation status; creating s. 607.506, F.S.; requiring that the corporate purpose must be to create a public benefit; providing criteria; creating s. 607.507, F.S.; requiring that the directors of a social purpose corporation meet a standard of conduct; providing criteria for the standards; creating s. 607.508, F.S.; authorizing the articles of incorporation of a social purpose corporation to provide for a benefit director; providing powers and duties of a benefit director; creating s. 607.509, F.S.; requiring that the officers of a social purpose corporation meet a standard of conduct; providing criteria for the standards of conduct; creating s. 607.510, F.S.; authorizing a social purpose corporation to designate an officer as a benefit officer; providing for the powers and duties of a benefit officer; creating s. 607.511, F.S.; authorizing certain legal actions to be brought against a social purpose corporation, its officers, or its directors; creating s. 607.512, F.S.; requiring the board of directors to prepare an annual benefit report; providing criteria for the preparation of the report; creating s. 607.513, F.S.; establishing requirements for the availability and dissemination of

the annual report; authorizing a court to order dissemination of the report; providing criteria; creating part III of ch. 607, F.S., entitled "Benefit Corporations"; creating s. 607.601, F.S.; providing for application and effect; creating s. 607.602, F.S.; providing definitions; creating s. 607.603, F.S.; establishing requirements for the formation of a benefit corporation; creating s. 607.604, F.S.; providing procedures for an existing corporation to become a benefit corporation; creating s. 607.605, F.S.; providing procedures for the termination of a benefit corporation status; creating s. 607.606, F.S.; requiring that the corporate purpose be to create a public benefit; providing criteria; creating s. 607.607, F.S.; requiring the directors of a benefit corporation to meet a standard of conduct; providing criteria for the standards; creating s. 607.608, F.S.; authorizing the articles of incorporation of a benefit corporation to provide for a benefit director; providing powers and duties of the benefit director; creating s. 607.609, F.S.; requiring the officers of a benefit corporation to meet a standard of conduct; providing criteria for the standards of conduct; creating s. 607.610, F.S.; authorizing a benefit corporation to designate an officer as a benefit officer; providing for the powers and duties of the

benefit officer; creating s. 607.611, F.S.; authorizing certain legal actions to be brought against a benefit corporation, its officers, or its directors; creating s. 607.612, F.S.; requiring the board of directors to prepare an annual benefit report; providing criteria for the preparation of the report; creating s. 607.613, F.S.; establishing requirements for the availability and dissemination of the annual report; authorizing a court to order dissemination of the report; amending ss. 617.0401 and 620.1108, F.S; providing additional exceptions regarding the requirement that the names of entities be distinguishable; specifying differences in names which are not considered distinguishable; amending ss. 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 605.0112, Florida Statutes, is amended to read:

605.0112 Name.—

(1) The name of a limited liability company:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC."~~;~~

(b) Must be distinguishable in the records of the Division of Corporations of the department from the names of all other entities or filings that are on file with the division, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state~~, which names are on file with the division~~; however, a limited liability company may register under a name that is not otherwise distinguishable on the records of the division with the written consent of the owner entity if~~, provided~~ the consent is filed with the division at the time of registration of such name. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.

2. A definite or indefinite article.

3. The word "and" and the symbol "&."

4. The singular, plural, or possessive form of a word.

5. A recognized abbreviation of a root word.

6. A punctuation mark or a symbol.~~;~~

(c) May not contain language stating or implying that the limited liability company is organized for a purpose other than a purpose authorized in this chapter and its articles of organization.~~; and~~

(d) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

Section 2. Sections 607.0101 through 607.193, Florida Statutes, are designated as part I of chapter 607, Florida Statutes, and entitled "CORPORATIONS."

Section 3. Section 607.0101, Florida Statutes, is amended to read:

607.0101 Short title.—This part ~~act shall be known and~~ may be cited as the "Florida Business Corporation Act."

Section 4. Section 607.0401, Florida Statutes, is amended to read:

607.0401 Corporate name.—A corporate name:

(1) Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp," "Inc," or "Co," as will clearly indicate that it is a corporation instead of a natural person, partnership, or other business entity.~~;~~

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted

in this act and its articles of incorporation.~~;~~

(3) May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation chartered under the laws of the United States.~~; and~~

(4) Must be distinguishable from the names of all other entities or filings that are on file with the Division of Corporations, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state~~, which names are on file with the Division of Corporations~~. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

(a) A suffix.

(b) A definite or indefinite article.

(c) The word "and" and the symbol "&."

(d) The singular, plural, or possessive form of a word.

(e) A recognized abbreviation of a root word.

(f) A punctuation mark or a symbol.

(5) ~~The name of the corporation~~ As filed with the Department of State, is ~~shall be~~ for public notice only and does ~~shall~~ not alone create any presumption of ownership beyond that which is created under the common law.

Section 5. Subsection (1) of section 607.1302, Florida

Statutes, is amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a conversion of such corporation pursuant to s. 607.1112 if shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion under ss. 607.1103 and 607.1112(6), or the consummation of a merger to which such corporation is a party if shareholder approval is required for the merger under s. 607.1103 and the shareholder is entitled to vote on the merger or if such corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights <u>are</u> ~~shall~~ not ~~be~~ available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of

the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) An amendment of the articles of incorporation with respect to the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(e) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; ~~or~~

(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;

2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or

reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;~~.~~

(g) An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

(h) An amendment of the articles of incorporation of a benefit corporation to which s. 607.604 or s. 607.605 applies;

(i) A merger, conversion, or share exchange of a social

purpose corporation to which s. 607.504 applies; or

(j) A merger, conversion, or share exchange of a benefit corporation to which s. 607.604 applies.

Section 6. Sections 607.501 through 607.513, Florida Statutes, are designated as part II of chapter 607, Florida Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

Section 7. Section 607.501, Florida Statutes, is created to read:

607.501 Application and effect of part.—

(1) This part applies to a social purpose corporation and does not affect a corporation that is not a social purpose corporation.

(2) Except as otherwise provided in this part, this chapter applies generally to all social purpose corporations.

(3) A social purpose corporation may be simultaneously subject to this part and to one or more chapters, including chapter 621. In such event, this part takes precedence with respect to a social purpose corporation.

(4) Except as authorized by this part, a provision of the articles of incorporation or bylaws of a social purpose corporation, or a shareholders agreement among shareholders of a social purpose corporation, may not limit, be inconsistent with, or supersede a provision of this part.

Section 8. Section 607.502, Florida Statutes, is created to read:

607.502 Definitions.—As used in this part, unless the

context otherwise requires, the term:

(1) "Benefit director" means:

(a) The director designated as the benefit director of a social purpose corporation under s. 607.508; or

(b) A person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or bylaws under s. 607.508.

(2) "Benefit enforcement proceeding" means a claim or action for:

(a) The failure of a social purpose corporation to pursue or create a public benefit or a specific public benefit established in its articles of incorporation; or

(b) A violation of any obligation, duty, or standard of conduct under this part.

(3) "Benefit officer" means the individual designated as the benefit officer of a social purpose corporation under s. 607.510.

(4) "Independent" means not having a material relationship with the social purpose corporation or a subsidiary of the social purpose corporation. A person does not have a material relationship solely by virtue of serving as the benefit director or benefit officer of the social purpose corporation or a subsidiary of the social purpose corporation. In determining whether a director or officer is independent, a material relationship between an individual and a social purpose corporation or any of its subsidiaries will be conclusively

presumed to exist, at the time independence is to be determined, if any of the following apply:

(a) The individual is or was within the prior 3 years an employee, other than a benefit officer, of the social purpose corporation or a subsidiary.

(b) An immediate family member of the individual is or was within the prior 3 years an executive officer, other than a benefit officer, of the social purpose corporation or a subsidiary.

(c) When ownership is calculated as if all outstanding rights to acquire equity interests in the social purpose corporation had been exercised, there is beneficial or record ownership of 5 percent or more of the outstanding shares of the social purpose corporation by:

1. The individual; or

2. An entity:

a. Of which the individual is a director, an officer, or a manager; or

b. In which, when ownership is calculated as if all outstanding rights to acquire equity interests in the entity had been exercised, the individual owns beneficially or of record 5 percent or more of the outstanding equity interests.

(5) "Minimum status vote" means:

(a) In the case of a corporation that is to become a social purpose corporation, whether by amendment of the articles of incorporation or by way of or pursuant to a merger,

conversion, or share exchange; a social purpose corporation whose articles of incorporation are to be amended pursuant to s. 607.506(2); or a social purpose corporation that is to cease being a social purpose corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

1. The holders of each class or series of shares shall be entitled to vote as a separate voting group on the corporate action regardless of any limitation on the voting rights of any class or series stated in the articles of incorporation or bylaws.

2. The corporate action is approved by vote of each class or series of shares entitled to vote by at least two-thirds of the total votes of the class or series.

(b) In the case of a domestic entity, other than a corporation, which is to be simultaneously converted to a social purpose corporation or merged into a social purpose corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

1. The holders of each class or series of equity interest in the entity who are entitled to receive a distribution of any kind are entitled, as a separate voting group, to vote on or consent to the action regardless of any applicable limitation on the voting or consent rights of any class or series.

2. The action is approved by vote or consent of each class or series of equity interest described in subparagraph 1. who

are entitled to vote by at least two-thirds of the votes or consent of the class or series.

(6) "Public benefit" means a positive effect, or the minimization of negative effects taken as a whole, on the environment or on one or more categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, from the business and operations of a social purpose corporation. The term includes, but is not limited to, the following:

(a) Providing low-income or underserved individuals or communities with beneficial products or services.

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

(c) Protecting or restoring the environment.

(d) Improving human health.

(e) Promoting the arts, sciences, or advancement of knowledge.

(f) Increasing the flow of capital to entities that have as their stated purpose the provision of a benefit to society or the environment.

(7) "Social purpose corporation" means a corporation that is formed, or has elected to become, subject to this part, the status of which as a social purpose corporation has not been terminated.

(8) "Specific public benefit" means a benefit identified as a purpose of the social purpose corporation which is set forth in the articles of incorporation and is consistent with a public benefit.

(9) "Subsidiary" means, in relation to a person other than an individual, an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests.

(10) "Third-party standard" means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business which is:

(a) Comprehensive, because it assesses the effect of the business and its operations upon the interests listed in s. 607.507(1)(a).

(b) Developed by an entity that is not controlled by the social purpose corporation.

(c) Credible, because it is developed by an entity that has access to necessary expertise to assess the overall effect of the business and uses a balanced, collaborative approach to develop the standard, including a period for public comment.

(d) Transparent, because the following information is publicly available:

1. The criteria considered under the standard when measuring the overall effect of the business and its operations upon the interests provided in s. 607.507(1)(a) and the relative weights, if any, of those criteria; and

2. The process used in the development and revision of the third-party standard regarding the identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard; the process by which revisions to the standard and changes to the membership of the governing body are made; and an accounting of the revenue and sources of financial support for the entity with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Section 9. Section 607.503, Florida Statutes, is created to read:

607.503 Incorporation.—To incorporate as a social purpose corporation, an incorporator must satisfy the requirements of this chapter, and the articles of incorporation must state that the corporation is a social purpose corporation under this part.

Section 10. Section 607.504, Florida Statutes, is created to read:

607.504 Election of social purpose corporation status.—

(1) An existing corporation may become a social purpose corporation under this part by amending its articles of incorporation to include a statement that the corporation is a social purpose corporation under this part. The amendment must be adopted by the minimum status vote.

(2) A plan of merger, conversion, or share exchange must be adopted by the minimum status vote if an entity that is not a social purpose corporation is a party to the merger or

conversion or if the exchanging entity in a share exchange and the surviving, new, or resulting entity is, or will be, a social purpose corporation.

(3) If an entity elects to become a social purpose corporation by amendment of the articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1333.

Section 11. Section 607.505, Florida Statutes, is created to read:

607.505 Termination of social purpose corporation status.-

(1) A social purpose corporation may terminate its status as such and cease to be subject to this part by amending its articles of incorporation to delete the provision required under s. 607.503 or s. 607.504. The amendment must be adopted by the minimum status vote.

(2) A plan of merger, conversion, or share exchange which has the effect of terminating the status of a corporation as a social purpose corporation must be adopted by the minimum status vote. A sale, lease, exchange, or other disposition of all or substantially all of the assets of a social purpose corporation is not effective unless the transaction is approved by the minimum status vote. However, a minimum status vote is not required if the transaction is in the usual and regular course of business, is pursuant to court order, or is a sale pursuant to which all or a substantial portion of the net proceeds of the

sale will be distributed to the shareholders within 1 year after the date of the sale.

(3) If a corporation's status as a social purpose corporation is terminated pursuant to subsection (1) or subsection (2), shareholders of the corporation are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1333.

Section 12. Section 607.506, Florida Statutes, is created to read:

607.506 Corporate purpose.—

(1) A social purpose corporation has the purpose of creating a public benefit. This purpose is in addition to its purpose under s. 607.0301.

(2) The articles of incorporation of a social purpose corporation may identify one or more specific public benefits as its purpose in addition to its purposes under s. 607.0301 and subsection (1). A social purpose corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose; however, the amendment must be adopted by the minimum status vote.

(3) The creation of a public benefit and a specific public benefit under subsections (1) and (2) is deemed to be in the best interest of the social purpose corporation.

(4) A professional corporation that is a social purpose corporation does not violate s. 621.08 by having as its purpose the creation of a public benefit or a specific public benefit.

Section 13. Section 607.507, Florida Statutes, is created

to read:

607.507 Standard of conduct for directors.—

(1) In discharging their duties and in considering the best interests of the social purpose corporation, the directors:

(a) Shall consider the effects of any action or inaction upon:

1. The shareholders of the social purpose corporation; and

2. The ability of the social purpose corporation to accomplish its public benefit or any specific public benefit purpose.

(b) May consider the effects of any action or inaction upon any of the following:

1. The employees and work force of the social purpose corporation, its subsidiaries, and its suppliers.

2. The interests of customers and suppliers as beneficiaries of the public benefit or specific public benefits of the social purpose corporation.

3. Community and societal factors, including those of each community in which offices or facilities of the social purpose corporation, its subsidiaries, or its suppliers are located.

4. The local and global environment.

5. The short-term and long-term interests of the social purpose corporation, including benefits that may accrue to the social purpose corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the social purpose corporation.

(c) May consider other pertinent factors or the interests of any other group that they deem appropriate.

(d) Are not required to give priority to the interests of a particular person or group referred to in paragraph (a), paragraph (b), or paragraph (c) unless the social purpose corporation states in its articles of incorporation its intention to give such priority.

(e) Are not required to give equal weight to the interests of any particular person or group referred to in paragraph (a), paragraph (b), or paragraph (c) unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight.

(2) Except as provided in the articles of incorporation, a director is not personally liable for monetary damages to the corporation, or to any other person, for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit. A director is subject to the duties specified in s. 607.0830.

(3) Except as provided in the articles of incorporation, a director does not have a duty to a person who is a beneficiary of the public benefit purpose or any one or more specific public benefit purposes of a social purpose corporation.

Section 14. Section 607.508, Florida Statutes, is created to read:

607.508 Benefit director.—

(1) If the articles of incorporation so provide, the board

of directors of a social purpose corporation may include a director who is designated as the benefit director and, in addition to the powers, duties, rights, and immunities of the other directors of the social purpose corporation, has the powers, duties, rights, and immunities provided in this part.

(2) The benefit director shall be elected, and may be removed, in the manner provided by this chapter. Except as provided under subsection (5), the benefit director shall be independent and may serve as a benefit officer. The articles of incorporation or bylaws may prescribe additional qualifications of the benefit director.

(3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director shall prepare, and the social purpose corporation shall include in the annual benefit report to shareholders required under s. 607.512, the opinion of the benefit director on the following:

(a) Whether the social purpose corporation in all material respects acted in accordance with its public benefit purpose and any specific public benefit purpose during the period covered by the report.

(b) Whether the directors and officers complied with ss. 607.507(1) and 607.509(1).

(c) Whether the social purpose corporation or its directors or officers failed to comply with paragraph (a) or s. 607.507(1) or s. 607.509(1), including a description of the ways in which the social purpose corporation or its directors or

officers failed to comply.

(4) The action or inaction of an individual in his or her capacity as a benefit director shall constitute for all purposes an action or inaction of that individual in his or her capacity as a director of the social purpose corporation.

(5) The benefit director of a corporation formed under chapter 621 is not required to be independent.

Section 15. Section 607.509, Florida Statutes, is created to read:

607.509 Standard of conduct for officers.—

(1) If an officer of a social purpose corporation reasonably believes that a matter may have a material effect on the ability of the corporation to create a public benefit or a specific public benefit identified in the articles of incorporation and the officer has discretion to act on the matter, the officer shall consider the interests and factors provided in s. 607.507(1).

(2) The officer's consideration of interests and factors under subsection (1) does not constitute a violation of s. 607.0841.

(3) Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages to the corporation or any other person for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit; however, he or she is subject to s. 607.0841.

(4) Except as provided in the articles of incorporation, an officer does not have any duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation arising from the status of the person as a beneficiary.

Section 16. Section 607.510, Florida Statutes, is created to read:

607.510 Benefit officer.—

(1) A social purpose corporation may designate an officer as the benefit officer.

(2) The benefit officer has the powers and duties set forth in the bylaws or determined by the board of directors, which may include, but are not limited to:

(a) Powers and duties relating to the public benefit or a specific public benefit purpose of the corporation; and

(b) The duty to prepare the annual benefit report required under s. 607.512.

Section 17. Section 607.511, Florida Statutes, is created to read:

607.511 Right of action.—

(1)(a) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a social purpose corporation or its directors or officers with respect to:

1. A failure to pursue or create a public benefit or a specific public benefit set forth in its articles of

incorporation; or

2. A violation of an obligation, duty, or standard of conduct under this part.

(b) A social purpose corporation is not liable for monetary damages under this part for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) Directly by the social purpose corporation; or

(b) Derivatively by:

1. A shareholder of record on the date of the action or inaction complained of in the benefit enforcement proceeding;

2. A director;

3. A person or group of persons that owns beneficially or of record 5 percent or more of the outstanding equity interests in an entity of which the social purpose corporation is a subsidiary on the date of the action or inaction complained of in the benefit enforcement proceeding; or

4. Any other person who is specified in the articles of incorporation or bylaws of the social purpose corporation.

Section 18. Section 607.512, Florida Statutes, is created to read:

607.512 Preparation of annual benefit report.—

(1) Unless it is prepared by a benefit director or benefit officer, the board of directors shall prepare an annual benefit

report. The annual benefit report must include all of the following:

(a) A narrative description of:

1. The ways in which the social purpose corporation pursued a public benefit during the year and the extent to which a public benefit was created.

2. Any circumstance that has hindered the pursuit or creation of a public benefit by the social purpose corporation.

3. The process and rationale for selecting or changing the third-party standard used to prepare the benefit report, if the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard.

(b) If the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard, the third-party standard must be:

1. Applied consistently with any previous application in prior annual benefit reports; or

2. Accompanied by an explanation of the reasons for inconsistent application or any change in the standard from the immediate prior report.

(c) The name of the benefit director and the benefit officer, if those positions exist, and the respective addresses to which correspondence may be directed.

(d) If the corporation has a benefit director, his or her statement as provided in s. 607.508(3).

(e) If the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard, a statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of 5 percent or more of the governance interests in the organization, and the social purpose corporation or its directors, officers, or any holder of 5 percent or more of the outstanding shares of the social purpose corporation, including any financial or governance relationship that might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by an annual benefit report, a benefit director resigned from, or refused to stand for reelection to, his or her position, or was removed from his or her position, and he or she furnished written correspondence to the social purpose corporation concerning the circumstances surrounding his or her departure, that correspondence must be included as an exhibit in the annual benefit report.

(3) The annual benefit report and the assessment of the performance of the social purpose corporation in the annual benefit report required under paragraph (1)(b) are not required to be audited or certified by a third-party standards provider.

Section 19. Section 607.513, Florida Statutes, is created

to read:

607.513 Availability of annual benefit report.—

(1) Each social purpose corporation shall send its annual benefit report to each shareholder:

(a) Within 120 days after the end of the fiscal year of the social purpose corporation; or

(b) At the same time that the social purpose corporation delivers any other annual report to its shareholders.

(2) A social purpose corporation shall post each annual benefit report on the public portion of its website, if any, and it shall remain posted for at least 3 years.

(3) If a social purpose corporation does not have a website, the corporation shall provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

(4) If a social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the social purpose corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder of the social purpose corporation requests a copy, summarily order the corporation to furnish the annual benefit report. If the court orders the annual benefit report to be furnished, the court may also order the social purpose corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in

obtaining the order and otherwise enforce his or her rights under this section.

Section 20. Sections 607.601 through 607.613, Florida Statutes, are designated as part III of chapter 607, Florida Statutes, entitled "BENEFIT CORPORATIONS."

Section 21. Section 607.601, Florida Statutes, is created to read:

607.601 Application and effect of part.—

(1) This part applies to a benefit corporation and does not affect a corporation that is not a benefit corporation.

(2) Except as provided in this part, this chapter applies generally to all benefit corporations.

(3) A benefit corporation may be simultaneously subject to this part and to one or more chapters, including chapter 621. In such event, this part takes precedence with respect to a benefit corporation.

(4) Except as authorized by this part, a provision of the articles of incorporation or bylaws of a benefit corporation, or a shareholders agreement among shareholders of a benefit corporation, may not limit, be inconsistent with, or supersede a provision of this part.

Section 22. Section 607.602, Florida Statutes, is created to read:

607.602 Definitions.—As used in this part, unless the context otherwise requires, the term:

(1) "Benefit corporation" means a corporation that is

formed, or has elected to become, subject to this part, the status of which as a benefit corporation has not been terminated.

(2) "Benefit director" means:

(a) The director designated as the benefit director of a benefit corporation under s. 607.608; or

(b) A person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or bylaws under s. 607.608.

(3) "Benefit enforcement proceeding" means any claim or action for:

(a) The failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) A violation of any obligation, duty, or standard of conduct under this part.

(4) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under s. 607.610.

(5) "General public benefit" means a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation.

(6) "Independent" means not having a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person does not have a material relationship solely by virtue of serving as the benefit director or benefit

officer of the benefit corporation or a subsidiary of the benefit corporation. In determining whether a director or officer is independent, a material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist, at the time independence is to be determined, if any of the following apply:

(a) The individual is or has been within the prior 3 years an employee, other than a benefit officer, of the benefit corporation or a subsidiary.

(b) An immediate family member of the individual is or has been within the prior 3 years an executive officer, other than a benefit officer, of the benefit corporation or a subsidiary.

(c) When ownership is calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, there is beneficial or record ownership of 5 percent or more of the outstanding shares of the benefit corporation by:

1. The individual; or

2. An entity:

a. Of which the individual is a director, an officer, or a manager; or

b. In which, when ownership is calculated as if all outstanding rights to acquire equity interests in the entity had been exercised, the individual owns beneficially or of record 5 percent or more of the outstanding equity interests.

(7) "Minimum status vote" means:

(a) In the case of a corporation that is to become a benefit corporation, whether by amendment of the articles of incorporation or by way of or pursuant to a merger, conversion, or share exchange; a benefit corporation whose articles of incorporation are to be amended pursuant to s. 607.606(2); or a benefit corporation that is to cease being a benefit corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

1. The holders of each class or series of shares shall be entitled to vote as a separate voting group on the corporate action regardless of any limitation on the voting rights of any class or series stated in the articles of incorporation or bylaws.

2. The corporate action is approved by vote of each class or series of shares entitled to vote by at least two-thirds of the total votes of the class or series.

(b) In the case of a domestic entity, other than a corporation, which is to be simultaneously converted to a benefit corporation or merged into a benefit corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

1. The holders of each class or series of equity interest in the entity who are entitled to receive a distribution of any kind are entitled, as a separate voting group, to vote on or consent to the action regardless of any applicable limitation on the voting or consent rights of any class or series.

2. The action is approved by vote or consent of each class or series of equity interest described in subparagraph 1. who are entitled to vote by at least two-thirds of the votes or consent of the class or series.

(8) "Specific public benefit" includes, but is not limited to:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities that have as their stated purpose the provision of a benefit to society or the environment; and

(g) Any other public benefit consistent with the purposes of the benefit corporation.

(9) "Subsidiary" means, in relation to a person other than an individual, an entity in which a person owns beneficially or of record 50 percent or more of the outstanding equity interests.

(10) "Third-party standard" means a recognized standard for defining, reporting, and assessing the societal and

environmental performance of a business which is:

(a) Comprehensive, because it assesses the effect of the business and its operations upon the interests provided in s. 607.607(1)(a)2.-5.

(b) Developed by an entity that is not controlled by the benefit corporation.

(c) Credible, because it is developed by an entity that has access to necessary expertise to assess the overall societal and environmental performance of a business and uses a balanced, collaborative approach to develop the standard, including a period for public comment.

(d) Transparent, because the following information is publicly available:

1. The criteria considered under the standard when measuring the overall societal and environmental performance of a business and the relative weights, if any, of those criteria.

2. The identity of the directors, officers, material owners, and the governing body of the entity that developed and controlled revisions; the process by which revisions to the standard and changes to the membership of the governing body are made; and an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Section 23. Section 607.603, Florida Statutes, is created to read:

607.603 Incorporation.—To incorporate as a benefit corporation, an incorporator must satisfy the requirements of this chapter, and the articles of incorporation must state that the corporation is a benefit corporation under this part.

Section 24. Section 607.604, Florida Statutes, is created to read:

607.604 Election of benefit corporation status.—

(1) An existing corporation may become a benefit corporation under this part by amending its articles of incorporation to include a statement that the corporation is a benefit corporation under this part. The amendment must be adopted by the minimum status vote.

(2) A plan of merger, conversion, or share exchange must be adopted by the minimum status vote if an entity that is not a benefit corporation is a party to a merger or conversion or if the exchanging entity in a share exchange and the surviving, new, or resulting entity is, or will be, a benefit corporation.

(3) If an entity elects to become a benefit corporation by amendment of the articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1333.

Section 25. Section 607.605, Florida Statutes, is created to read:

607.605 Termination of benefit corporation status.—

(1) A benefit corporation may terminate its status as such

and cease to be subject to this part by amending its articles of incorporation to delete the provision required under s. 607.603 or s. 607.604. The amendment must be adopted by the minimum status vote.

(2) A plan of merger, conversion, or share exchange which has the effect of terminating the status of a corporation as a benefit corporation must be adopted by the minimum status vote. A sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation is not effective unless the transaction is approved by the minimum status vote. However, a minimum status vote is not required if the transaction is in the usual and regular course of business, is pursuant to court order, or is a sale pursuant to which all or a substantial portion of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of the sale.

(3) If a corporation's status as a benefit corporation is terminated pursuant to subsection (1) or subsection (2), shareholders of the corporation are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1333.

Section 26. Section 607.606, Florida Statutes, is created to read:

607.606 Corporate purpose.—

(1) A benefit corporation has the purpose of creating general public benefit. This purpose is in addition to its purpose under s. 607.0301.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits as its purpose in addition to its purposes under s. 607.0301 and subsection (1). A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose; however, the amendment must be adopted by the minimum status vote. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (1).

(3) The creation of general public benefit and a specific public benefit under subsections (1) and (2) is deemed to be in the best interest of the benefit corporation.

(4) A professional corporation that is a benefit corporation does not violate s. 621.08 by having as its purpose the creation of general public benefit or a specific public benefit.

Section 27. Section 607.607, Florida Statutes, is created to read:

607.607 Standard of conduct for directors.—

(1) In discharging their duties and in considering the best interests of the benefit corporation, the directors:

(a) Shall consider the effects of any action or inaction upon:

1. The shareholders of the benefit corporation;

2. The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;

3. The interests of customers and suppliers as beneficiaries of the general public benefit and any specific public benefit purposes of the benefit corporation;

4. Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

5. The local and global environment;

6. The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

7. The ability of the benefit corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes, if any.

(b) May consider other pertinent factors or the interests of any other group that they deem appropriate.

(c) Are not required to give priority to the interests of a particular person or group referred to in paragraph (a) or paragraph (b) over the interests of any other person or group, unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests.

(d) Are not required to give equal weight to the interests of a particular person or group referred to in paragraph (a) or paragraph (b) unless the benefit corporation has stated in its

articles of incorporation its intention to give such equal weight.

(2) Except as provided in the articles of incorporation, a director is not personally liable for monetary damages to the corporation, or to any other person, for the failure of the benefit corporation to pursue or create general public benefit or a specific public benefit. A director is subject to the duties established in s. 607.0830.

(3) Except as provided in the articles of incorporation, a director does not have a duty to a person who is a beneficiary of the general public benefit purpose or any one or more specific public benefit purposes of the benefit corporation.

Section 28. Section 607.608, Florida Statutes, is created to read:

607.608 Benefit director.—

(1) If the articles of incorporation so provide, the board of directors of a benefit corporation may include a director who is designated as the benefit director and, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, has the powers, duties, rights, and immunities provided in this part.

(2) The benefit director shall be elected, and may be removed, in the manner provided by this chapter. Except as provided under subsection (5), the benefit director shall be independent and may serve as a benefit officer. The articles of incorporation or bylaws may prescribe additional qualifications

of the benefit director.

(3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required under s. 607.612, the opinion of the benefit director on the following:

(a) Whether the benefit corporation in all material respects acted in accordance with its general public benefit purpose and any specific public benefit purpose during the period covered by the report.

(b) Whether the directors and officers complied with ss. 607.607(1) and 607.609(1).

(c) Whether the benefit corporation or its directors or officers failed to comply with paragraph (a) or s. 607.607(1) or s. 607.609(1), including a description of the ways in which the benefit corporation or its directors or officers failed to comply.

(4) The action or inaction of an individual in his or her capacity as a benefit director shall constitute for all purposes an action or inaction of that individual in his or her capacity as a director of the benefit corporation.

(5) The benefit director of a corporation formed under chapter 621 is not required to be independent.

Section 29. Section 607.609, Florida Statutes, is created to read:

607.609 Standard of conduct for officers.—

(1) If an officer of a benefit corporation reasonably believes that a matter may have a material effect on the ability of the corporation to create, or the creation by the corporation of, general public benefit or a specific public benefit identified in the articles of incorporation and the officer has discretion to act on the matter, the officer shall consider the interests and factors provided in s. 607.607(1).

(2) The officer's consideration of interests and factors under subsection (1) does not constitute a violation of s. 607.0841.

(3) Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages to the corporation or to any other person for the failure of the benefit corporation to pursue or create general public benefit or a specific public benefit; however, he or she is subject to s. 607.0841.

(4) Except as provided in the articles of incorporation, an officer does not have a duty to a person who is a beneficiary of the general public benefit purpose or any specific public benefit purpose of the benefit corporation arising from the status of the person as a beneficiary.

Section 30. Section 607.610, Florida Statutes, is created to read:

607.610 Benefit officer.—

(1) A benefit corporation may designate an officer as the benefit officer.

(2) The benefit officer has the powers and duties set forth in the bylaws or determined by the board of directors, which may include, but are not limited to:

(a) Powers and duties relating to the general public benefit or a specific public benefit purpose of the corporation; and

(b) The duty to prepare the annual benefit report required under s. 607.612.

Section 31. Section 607.611, Florida Statutes, is created to read:

607.611 Right of action.—

(1)(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

1. A failure to pursue or create a general public benefit or a specific public benefit set forth in its articles of incorporation; or

2. A violation of an obligation, duty, or standard of conduct under this part.

(b) A benefit corporation is not liable for monetary damages under this part for the failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) Directly by the benefit corporation; or

(b) Derivatively by:

1. A shareholder of record on the date of the action or inaction complained of in the benefit enforcement proceeding;

2. A director;

3. A person or group of persons that owns beneficially or of record 5 percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary on the date of the action or inaction complained of in the proceeding; or

4. Any other person who is specified in the articles of incorporation or bylaws of the benefit corporation.

Section 32. Section 607.612, Florida Statutes, is created to read:

607.612 Preparation of annual benefit report.—

(1) Unless it is prepared by a benefit director or a benefit officer, the board of directors shall prepare an annual benefit report. The annual benefit report must include all of the following:

(a) A narrative description of:

1. The ways in which the benefit corporation pursued general public benefit during the year and the extent to which the general public benefit was created.

2. Any circumstance that has hindered the pursuit or creation of general public benefit or a specific public benefit by the benefit corporation.

3. The process and rationale for selecting or changing the

third-party standard used to prepare the benefit report.

(b) The name of the benefit director and the benefit officer, if those positions exist, and the respective business addresses to which correspondence may be directed.

(c) If the corporation has a benefit director, the statement as provided in s. 607.608(3).

(d) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of 5 percent or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of 5 percent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship that might materially affect the credibility of the use of the third-party standard.

(2) The annual benefit report must be prepared in accordance with a third-party standard that is:

(a) Applied consistently with any previous application in prior annual benefit reports; or

(b) Accompanied by an explanation of the reasons for any inconsistent application or any change in the standard from the immediate prior report.

(3) If, during the year covered by an annual benefit report, a benefit director resigned from, or refused to stand for reelection to, his or her position, or was removed from his or her position, and he or she furnished written correspondence to the benefit corporation concerning the circumstances

surrounding his or her departure, that correspondence must be included as an exhibit in the annual benefit report.

(4) The annual benefit report and the assessment of the performance of the benefit corporation in the annual benefit report required under subsection (2) are not required to be audited or certified by a third-party standards provider.

Section 33. Section 607.613, Florida Statutes, is created to read:

607.613 Availability of annual benefit report.—

(1) Each benefit corporation shall send its annual benefit report to each shareholder:

(a) Within 120 days after the end of the fiscal year of the benefit corporation; or

(b) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post each annual benefit report on the public portion of its website, if any, and it shall remain posted for at least 3 years.

(3) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

(4) If a benefit corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the benefit corporation is located or, if no office is located in this

state, the county in which its registered office is located, may, after a shareholder of the benefit corporation requests a copy, summarily order the corporation to furnish the report. If the court orders the report to be furnished, the court may also order the benefit corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in obtaining the order and otherwise enforce his or her rights under this section.

Section 34. Subsection (1) of section 617.0401, Florida Statutes, is amended to read:

617.0401 Corporate name.—

(1) A corporate name:

(a) Must contain the word "corporation" or "incorporated" or the abbreviation "Corp." ~~"corp."~~ or "Inc." ~~"inc."~~ or words or abbreviations of like import in language, as will clearly indicate that it is a corporation instead of a natural person, unincorporated association, or partnership. The name of the corporation may not contain the word "company" or its abbreviation "Co." ~~"co.";~~

(b) May contain the word "cooperative" or "co-op" only if the resulting name is distinguishable from the name of any corporation, agricultural cooperative marketing association, or nonprofit cooperative association existing or doing business in this state under part I of chapter 607, chapter 618, or chapter 619.~~;~~

(c) May not contain language stating or implying that the

corporation is organized for a purpose other than that permitted in this act and its articles of incorporation.~~;~~

(d) May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation chartered under the laws of the United States.~~; and~~

(e) Must be distinguishable from the names of all other entities or filings that are on file with the Division of Corporations, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state~~, that are on file with the Division of Corporations~~. A name that is different from a name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.

2. A definite or indefinite article.

3. The word "and" and the symbol "&."

4. The singular, plural, or possessive form of a word.

5. A recognized abbreviation of a root word.

6. A punctuation mark or a symbol.

Section 35. Subsection (4) of section 620.1108, Florida Statutes, is amended to read:

620.1108 Name.—

(4) The name of a limited partnership must be

distinguishable in the records of the Department of State from the names of all other entities or filings that are on file with the Department of State, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state~~, the names of which are on file with the Department of State~~. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

(a) A suffix.

(b) A definite or indefinite article.

(c) The word "and" and the symbol "&."

(d) The singular, plural, or possessive form of a word.

(e) A recognized abbreviation of a root word.

(f) A punctuation mark or a symbol.

Section 36. Subsection (1) of section 48.091, Florida Statutes, is amended to read:

48.091 Corporations; designation of registered agent and registered office.—

(1) Every Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with part I of chapter 607.

Section 37. Paragraph (d) of subsection (6) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(6) REVENUE BONDS.—

(d) *State Board of Administration Finance Corporation.*—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the State Board of Administration Finance Corporation.

b. The corporation shall operate under a five-member board of directors consisting of the Governor or a designee, the Chief Financial Officer or a designee, the Attorney General or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the Chief Operating Officer of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under part I of chapter 607 and under chapter 617, subject only to ~~the provisions of~~ this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required under ~~by~~ s. 75.06 shall be published in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power

of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the State Board of Administration Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of

this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph is ~~shall be considered as~~ additional and supplemental authority and may ~~shall~~ not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence continues ~~shall continue~~ until terminated by law; however, ~~no~~ such law may not ~~shall~~ take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

7. The State Board of Administration Finance Corporation is for all purposes the successor to the Florida Hurricane Catastrophe Fund Finance Corporation.

Section 38. Subsection (1) of section 243.54, Florida Statutes, is amended to read:

243.54 Powers of the authority.—The purpose of the authority is to assist institutions of higher education in constructing, financing, and refinancing projects throughout the state and, for this purpose, the authority may:

(1) Exercise all powers granted to corporations under part I of ~~the Florida Business Corporation Act,~~ chapter 607.

Section 39. Section 310.171, Florida Statutes, is amended to read:

310.171 Pilots may incorporate themselves.—Any one or more licensed state pilots may incorporate in the manner provided under part I of chapter 607 or chapter 621.

Section 40. Section 310.181, Florida Statutes, is amended to read:

310.181 Corporate powers.—All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under part I of chapter 607 or under chapter 608 before January 1, 1976, or to corporations organized under chapter 621 ~~shall~~ apply to corporations organized pursuant to s. 310.171.

Section 41. Paragraph (c) of subsection (4) of section 329.10, Florida Statutes, is amended to read:

329.10 Aircraft registration.—

(4) It is a violation of this section for any person or corporate entity to knowingly supply false information to any governmental entity in regard to ownership by it or another firm, business, or corporation of an aircraft in or operated in

this state if it is determined that such corporate entity or other firm, business, or corporation:

(c) Has lapsed into a state of no longer being a legal entity in this state as defined in part I of chapter 607 or s. 865.09, and no documented attempt has been made to correct such information with the governmental entity for a period of 90 days after the date on which such lapse took effect with the Secretary of State.

Section 42. Subsection (1) of section 339.412, Florida Statutes, is amended to read:

339.412 Powers of corporation.—As to designated projects and in addition to other powers prescribed by law, a corporation may exercise the following powers with respect to the promotion and development of transportation facilities, pursuant to a written contract for the same, together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) The corporation may exercise all the powers as granted by the department to work directly with landowners, local and state governmental agencies, elected officials, and any other person to support those activities required to promote and develop the projects. These activities shall include:

(a) Acquiring, holding, investing, and administering property and transferring title of such property to the department for development of projects on behalf of the department;

(b) Performing preliminary and final alignment studies in a manner consistent with state and federal laws;

(c) Receiving contributions of land for rights-of-way and cash donations to be applied to the purchase of rights-of-way not donated or to be applied to the design or construction of the projects;

(d) Reviewing candidates for advisory directorships and adding or removing such advisory directors as may be appropriate;

(e) Retaining such administrative staff and legal, public relations, and engineering services as may be required for the development of the projects and paying such employees and consultants from funds donated for this purpose;

(f) Preparing such exhibits, right-of-way documents, environmental reports, schematics, and preliminary and final engineering plans as are necessary for the development of the projects;

(g) Borrowing money to meet any expenses or needs associated with the regular operations of the corporation or a particular project; provided, however, that no corporation shall have the power to issue bonds, the provisions of part I of chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

(h) Making official presentations to the state and other affected agencies or groups concerning the development of the projects;

(i) Issuing press releases and other material to promote

the activities of the projects; and

(j) Performing any other functions requested by the department in order to promote and develop the projects.

Nothing in this act empowers the corporation to enter into any contracts for construction or to undertake any construction, on behalf of the department.

Section 43. Subsection (4) of section 420.101, Florida Statutes, is amended to read:

420.101 Housing Development Corporation of Florida; creation, membership, and purposes.—

(4) Whenever the articles of incorporation have been filed in the Department of State and approved by it and all filing fees and taxes prescribed by part I of chapter 607 have been paid, the subscribers and their successors and assigns shall constitute a corporation, and the corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.

Section 44. Section 420.111, Florida Statutes, is amended to read:

420.111 Housing Development Corporation of Florida; additional powers.—In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by part I of chapter 607, the corporation shall, subject to the restrictions and limitations ~~herein~~ contained in

this section, have the following powers:

(1) To elect, appoint, and employ officers, agents and employees and to make contracts and incur liabilities for any of the purposes of the corporation, except that the corporation may ~~shall~~ not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association, or trust, or in any other manner.

(2) To borrow money from its stockholders, other financial institutions, and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder approval.

(3) To make loans to any person, firm, corporation, joint-stock company, association, or trust and to regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith, provided subsidies may be in the form of below market interest rates or such other assistance as determined by the board with the concurrence of the applicable regulatory agencies governing the several stockholder industries.

(4) To purchase, receive, hold, lease, or otherwise

acquire, and to sell, convey, transfer, lease, or otherwise dispose of, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) For the purposes of foreclosure, to acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing new housing or rehabilitation thereof; for the purposes of disposing of such real estate to others for the construction of housing or rehabilitation thereof; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of such housing, provided, however that nothing herein contained shall authorize the acquisition, construction, reconstruction, or operation of any public lodging establishment as defined in chapter 509.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock,

shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association, or trust, and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsection (4), subsection (5), or subsection (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with, and avail itself of the facilities of, the United States Department of Housing and Urban Development, the Department of Economic Opportunity, and any other similar local, state, or Federal Government agency; and to cooperate with and assist, and otherwise encourage, organizations in the various communities of the state on the promotion, assistance, and development of the housing and economic welfare of such communities or of this state or any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this part.

Section 45. Subsection (2) of section 420.161, Florida Statutes, is amended to read:

420.161 Housing Development Corporation of Florida; period of existence; method of dissolution.—

(2) The corporation may, upon the affirmative vote of two-thirds of the votes to which the stockholders are ~~shall be~~ entitled, dissolve the ~~said~~ corporation as provided under part I of ~~by~~ chapter 607, as long as that part does ~~insofar as chapter 607 is~~ not ~~in~~ conflict with ~~the provisions of~~ this act. Upon any dissolution of the corporation, ~~none of~~ the corporation's assets may not ~~shall~~ be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

Section 46. Subsection (9) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(9) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as authorized ~~permitted~~ or required under part I of ~~by~~ chapter 607. The term "officer of a corporation" includes a member owning at least 10 percent of a limited liability company created and approved under chapter 608.

Section 47. Paragraph (d) of subsection (10) of section 440.386, Florida Statutes, is amended to read:

440.386 Individual self-insurers' insolvency; conservation; liquidation.—

(10) TRANSFERS PRIOR TO PETITION.—

(d) The personal liability of the officers or directors of an insolvent individual self-insurer is ~~shall be~~ subject to part I of ~~the provisions of~~ chapter 607 and the penalties provided therein.

Section 48. Subsection (3) of section 609.08, Florida Statutes, is amended to read:

609.08 Merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.—

(3) If the surviving corporation is to be governed by the laws of any jurisdiction other than this state, it shall comply with part I of ~~the provisions of~~ chapter 607 with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Department of State of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of the association and in any proceeding for the enforcement of any rights under the declaration of trust of the association of a dissenting shareholder of the association against the surviving corporation.

(b) An irrevocable appointment of the Secretary of State as its agent to accept service of process in any such proceeding.

(c) An agreement that it will promptly pay to the dissenting shareholders of the association the amount, if any,

to which they are ~~shall be~~ entitled under ~~the provisions of~~ its declaration of trust with respect to the rights of dissenting shareholders.

Section 49. Section 617.1908, Florida Statutes, is amended to read:

617.1908 Applicability of Florida Business Corporation Act.—Except as ~~otherwise~~ made applicable by specific reference in any other section of this chapter, part I ~~the provisions~~ of chapter 607, the Florida Business Corporation Act, does ~~shall~~ not apply to any corporations not for profit.

Section 50. Section 618.221, Florida Statutes, is amended to read:

618.221 Conversion into a corporation for profit.—Any association incorporated under or that has adopted the provisions of this chapter, may, by a majority vote of its stockholders or members be brought under part I of ~~the provisions of~~ chapter 607, as a corporation for profit by surrendering all right to carry on its business under this chapter, and the privileges and immunities incident thereto. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the association has, by a majority vote of its stockholders or members, decided to surrender all rights, powers, and privileges as a nonprofit cooperative marketing association under this chapter and to do business under and be bound by part I of ~~the provisions of said~~ chapter 607, as a corporation for profit and has authorized all

changes accordingly. Articles of incorporation shall be delivered to the Department of State for filing as required under part I of chapter 607 ~~in and by s. 607.164~~, except that they shall be signed by the members of the then board of directors. The filing fees and taxes shall be as provided under part I of ~~in~~ chapter 607. Such articles of incorporation shall adequately protect and preserve the relative rights of the stockholders or members of the association so converting into a corporation for profit; provided that no rights or obligations due any stockholder or member of such association or any other person, firm, or corporation which has not been waived or satisfied shall be impaired by such conversion into a corporation for profit as herein authorized.

Section 51. Section 619.04, Florida Statutes, is amended to read:

619.04 Articles of incorporation.—Each association formed under this chapter must prepare and file articles of incorporation in the same manner and under the same regulations as required under part I of chapter 607, and therein shall set forth:

(1) The name of the association.

(2) The purpose for which it is formed.

(3) The place where its principal business will be transacted.

(4) The term for which it is to exist, not exceeding 50 years.

(5) The number of directors thereof, which must not be less than three and which may be any number in excess thereof, and the names and residences of those selected for the first year and until their successors shall have been elected and shall have accepted office.

(6) Whether the voting power and the property rights and interest of each member shall be equal, or unequal, and if unequal these articles shall set forth a general rule applicable to all members by which the voting power and the property rights and interests, respectively, of each member may and shall be determined and fixed, but the association shall have power to admit new members, who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule. This provision of the articles of incorporation may ~~shall~~ not be altered, amended, or repealed except by the unanimous written consent or the vote of all the members.

(7) Said articles must be subscribed by the original members and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds of conveyance, and shall be filed in accordance with the provisions of law, and when so filed the said articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein.

Section 52. Subsection (3) of section 624.430, Florida

Statutes, is amended to read:

624.430 Withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.—

(3) Upon office approval of the surrender of the certificate of authority of a domestic property and casualty insurer that is a corporation, the insurer may initiate the dissolution of the corporation in accordance with the applicable provisions of part I of chapter 607.

Section 53. Subsection (1) of section 624.462, Florida Statutes, is amended to read:

624.462 Commercial self-insurance funds.—

(1) Any group of persons may form a commercial self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any commercial property or casualty risk or surety insurance. Any fund established pursuant to subparagraph (2)(a)1. may be organized as a corporation under part I of chapter 607.

Section 54. Subsection (3) of section 624.489, Florida Statutes, is amended to read:

624.489 Liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.—

(3) The immunities from liability provided in this section with respect to trustees also apply to members of the board of directors of a commercial self-insurance fund organized as a corporation under part I of chapter 607 if the board of

directors has contracted with an administrator authorized under s. 626.88 to administer the day-to-day affairs of the fund.

Section 55. Section 628.041, Florida Statutes, is amended to read:

628.041 Applicability of general corporation statutes.—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic stock insurers and to domestic mutual insurers, except:

(1) As to any domestic mutual insurers incorporated pursuant to chapter 617, which chapter shall govern such insurers when in conflict with part I of chapter 607; and

(2) When in conflict with the express provisions of this code.

Section 56. Subsection (4) of section 631.262, Florida Statutes, is amended to read:

631.262 Transfers prior to petition.—

(4) The personal liability of the officers or directors of an insolvent insurer is ~~shall be~~ subject to part I of ~~the provisions of~~ chapter 607 and the penalties provided therein.

Section 57. Subsection (1) of section 636.204, Florida Statutes, is amended to read:

636.204 License required.—

(1) Before doing business in this state as a discount medical plan organization, an entity must be a corporation, a limited liability company, or a limited partnership,

incorporated, organized, formed, or registered under the laws of this state or authorized to transact business in this state in accordance with part I of chapter 607, chapter 608, chapter 617, chapter 620, or chapter 865, and must be licensed by the office as a discount medical plan organization or be licensed by the office pursuant to chapter 624, part I of this chapter, or chapter 641.

Section 58. Section 641.2015, Florida Statutes, is amended to read:

641.2015 Incorporation required.—On or after October 1, 1985, any entity that has not yet obtained a certificate of authority to operate a health maintenance organization in this state shall be incorporated or shall be a division of a corporation formed under the provisions of either part I of chapter 607 or chapter 617 or shall be a public entity that is organized as a political subdivision. In the case of a division of a corporation, the financial requirements of this part shall apply to the entire corporation. Incorporation shall not be required of any entity which has already been issued an initial certificate of authority prior to this date and which is not a corporation on October 1, 1985, or which is incorporated in any other state on October 1, 1985; nor shall incorporation be required on renewal of any certificate of authority by such an organization or be required of a public entity that is organized as a political subdivision.

Section 59. Subsection (1) of section 655.0201, Florida

Statutes, is amended to read:

655.0201 Service of process, notice, or demand on financial institutions.—

(1) Process against any financial institution authorized by federal or state law to transact business in this state may be served in accordance with chapter 48, chapter 49, part I of chapter 607, or chapter 608, as appropriate.

Section 60. Subsection (2) of section 658.23, Florida Statutes, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(2) The articles of incorporation shall contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which may ~~shall~~ not be less than the amount required by the office pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to the financial institutions codes.

(f) The initial street address of the main office of the corporation, which shall be in this state.

(g) The number of directors, which shall be five or more, and the names and street addresses of the members of the initial board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The office shall provide to the proposed directors form articles of incorporation which must ~~shall~~ include only those provisions required under ~~by~~ this section or under part I of ~~by~~ chapter 607. The form articles shall be acknowledged by the proposed directors and returned to the office for filing with the Department of State.

Section 61. Paragraph (c) of subsection (11) of section 658.2953, Florida Statutes, is amended to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(c) An out-of-state bank may establish and maintain a de novo branch or acquire a branch in this state upon compliance with part I of chapter 607 or chapter 608 relating to doing

business in this state as a foreign business entity, including maintaining a registered agent for service of process and other legal notice pursuant to s. 655.0201.

Section 62. Section 658.30, Florida Statutes, is amended to read:

658.30 Application of the Florida Business Corporation Act.—

(1) When not in direct conflict with or superseded by specific provisions of the financial institutions codes, the provisions of the Florida Business Corporation Act, part I of chapter 607, ~~shall~~ extend to state banks and trust companies formed under the financial institutions codes. This section shall be liberally construed to accomplish the purposes stated herein.

(2) Without limiting the generality of subsection (1), stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner authorized ~~permitted~~ by part I of chapter 607, and any action by stockholders, directors, or committees required or authorized ~~permitted~~ to be taken at a meeting may be taken without a meeting in any manner authorized ~~provided or permitted~~ by part I of chapter 607.

Section 63. Subsection (3) of section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(3) If a bank or trust company's capital accounts have been diminished by losses to less than the minimum required

pursuant to the financial institutions codes, the market value of its shares of capital stock is less than the present par value, and the bank or trust company cannot reasonably issue and sell new shares of stock to restore its capital accounts at a share price of par value or greater of the previously issued capital stock, the office, notwithstanding any other provisions of part I of chapter 607 or the financial institutions codes, may approve special stock offering plans.

(a) Such plans may include, but are not limited to, mechanisms for stock splits including reverse splits; revaluations of par value of outstanding stock; changes in voting rights, dividends, or other preferences; and creation of new classes of stock.

(b) The plan must be approved by majority vote of the bank or trust company's entire board of directors and by holders of two-thirds of the outstanding shares of stock.

(c) The office shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their related interests. The office shall also disapprove any plan that is not likely to restore the capital accounts to sufficient levels to achieve a sustainable, safe, and sound financial institution.

(d) For any bank or trust company that the office determines to be a failing financial institution pursuant to s. 655.4185, the office may approve special stock offering plans without a vote of the shareholders.

Section 64. Section 663.03, Florida Statutes, is amended to read:

663.03 Applicability of the Florida Business Corporation Act ~~chapter 607~~.—Notwithstanding s. 607.01401(12) ~~the definition of the term "foreign corporation" appearing in s. 607.01401~~, ~~all~~ ~~of~~ the provisions of part I of chapter 607 not in conflict with the financial institutions codes which relate to foreign corporations ~~shall~~ apply to all international banking corporations and their offices doing business in this state.

Section 65. Subsection (3) of section 663.04, Florida Statutes, is amended to read:

663.04 Requirements for carrying on financial institution business.—An international banking corporation or trust company, or any affiliate, subsidiary, or other person or business entity acting as an agent for, on behalf of, or for the benefit of such international banking corporation or trust company who engages in such activities from an office located in this state, may not transact a banking or trust business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation, trust company, affiliate, subsidiary, person, or business entity:

(3) Has filed with the office a certified copy of that information required to be supplied to the Department of State by those provisions of part I of chapter 607 which are applicable to foreign corporations.

Section 66. Paragraph (a) of subsection (1) of section

663.301, Florida Statutes, is amended to read:

663.301 Definitions.—

(1) As used in this part:

(a) "International development bank" means a corporation established for the purpose of promoting development in foreign countries by directly or indirectly making funding available to foreign business enterprises or foreign governments or by providing financing in connection with import-export transactions. Subject to the limitations contained in s. 663.313, an international development bank may be organized ~~either~~ under chapter 617 as a corporation not for profit or under part I of chapter 607 as a corporation for profit.

Section 67. Subsection (2) of section 663.306, Florida Statutes, is amended to read:

663.306 Decision by office.—The office may, in its discretion, approve or disapprove the application, but it shall not approve the application unless it finds that:

(2) The proposed capital structure is adequate, but in no case may the paid-in capital stock be:

(a) Less than $400,000 in the case of an international development bank organized under chapter 617 as a corporation not for profit; or

(b) The amount required for a state bank in the case of an international development bank organized under part I of chapter 607 as a corporation for profit.

The office may disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section.

Section 68. Subsection (4) of section 663.313, Florida Statutes, is amended to read:

663.313 Ownership of stock.—

(4) All of the shares of voting stock of an international development bank organized under part I of chapter 607 as a corporation for profit shall be owned by a regional development bank or by one or more wholly owned subsidiaries of a regional development bank.

Section 69. Subsection (2) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(2) POWERS AND DUTIES.—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws and part I of chapter ~~chapters~~ 607 and chapter 617, as applicable.

Section 70. Subsection (10) of section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(10) POWERS AND DUTIES.—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set

forth in the articles of incorporation and bylaws and part I of chapter ~~chapters~~ 607 and chapter 617, as applicable.

Section 71. Subsection (5) of section 720.302, Florida Statutes, is amended to read:

720.302 Purposes, scope, and application.—

(5) Unless expressly stated to the contrary, corporations that operate residential homeowners' associations in this state shall be governed by and subject to part I of chapter 607, if the association was incorporated under that part ~~chapter~~, or to chapter 617, if the association was incorporated under that chapter, and this chapter. This subsection is intended to clarify existing law.

Section 72. Paragraph (c) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting

interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under part I of chapter 607 or chapter 617 is ~~shall~~ not ~~be considered~~ a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 73. Paragraph (a) of subsection (1) of section 766.101, Florida Statutes, is amended to read:

766.101 Medical review committee, immunity from liability.—

(1) As used in this section:

(a) The term "medical review committee" or "committee" means:

1.a. A committee of a hospital or ambulatory surgical center licensed under chapter 395 or a health maintenance organization certificated under part I of chapter 641;~~,~~

b. A committee of a physician-hospital organization, a provider-sponsored organization, or an integrated delivery system;~~,~~

c. A committee of a state or local professional society of health care providers;~~,~~

d. A committee of a medical staff of a licensed hospital or nursing home, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home;~~,~~

e. A committee of the Department of Corrections or the Correctional Medical Authority as created under s. 945.602, or

employees, agents, or consultants of either the department or the authority or both;~~,~~

f. A committee of a professional service corporation formed under chapter 621 or a corporation organized under part I of chapter 607 or chapter 617, which is formed and operated for the practice of medicine as defined in s. 458.305(3), and which has at least 25 health care providers who routinely provide health care services directly to patients;~~,~~

g. A committee of the Department of Children and Families ~~Family Services~~ which includes employees, agents, or consultants to the department as deemed necessary to provide peer review, utilization review, and mortality review of treatment services provided pursuant to chapters 394, 397, and 916;~~,~~

h. A committee of a mental health treatment facility licensed under chapter 394 or a community mental health center as defined in s. 394.907, provided the quality assurance program operates pursuant to the guidelines that ~~which~~ have been approved by the governing board of the agency;~~,~~

i. A committee of a substance abuse treatment and education prevention program licensed under chapter 397 provided the quality assurance program operates pursuant to the guidelines that ~~which~~ have been approved by the governing board of the agency;~~,~~

j. A peer review or utilization review committee organized under chapter 440;~~,~~

k. A committee of the Department of Health, a county

health department, healthy start coalition, or certified rural health network, when reviewing quality of care, or employees of these entities when reviewing mortality records;~~,~~ or

1. A continuous quality improvement committee of a pharmacy licensed pursuant to chapter 465,

which committee is formed to evaluate and improve the quality of health care rendered by providers of health service, to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care, or that the cost of health care rendered was considered reasonable by the providers of professional health services in the area; or

2. A committee of an insurer, self-insurer, or joint underwriting association of medical malpractice insurance, or other persons conducting review under s. 766.106.

Section 74. Subsection (14) of section 865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(14) PROHIBITION.—A fictitious name registered as provided in this section may not contain the words "Corporation" or "Incorporated," or the abbreviations "Corp." or "Inc.," unless the person or business for which the name is registered is incorporated or has obtained a certificate of authority to transact business in this state pursuant to part I of chapter 607 or chapter 617.

Section 75. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Rooney offered the following:

Amendment (with title amendment)

Remove lines 142-145 and insert:

Statutes, and entitled "GENERAL PROVISIONS."

Section 3. Section 607.0101, Florida Statutes, is amended to read:

607.0101 Short title. -This chapter ~~act shall be known and~~ may

---

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

Remove lines 8-9 and insert:

designating part I of ch. 607, F.S., entitled "General Provisions"; amending s. 607.0101, F.S.; revising a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Family Law
SPONSOR(S): Civil Justice Subcommittee; Steube
TIED BILLS: None **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Cary	Bond
2) Judiciary Committee		Cary JMC	Havlicak RH
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill amends child support guidelines to require re-computation of the support award where a change in income would change the award at least 15% or $50, whichever amount is greater. The bill requires imputation of income even where the unemployment or underemployment is not voluntary. The bill also allows the court to take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill creates a task force to study the child support guidelines and produce a report prior to next years' legislative session.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter. The bill adds conforming references regarding this provision to statutes which address injunctions for domestic and repeat, sexual or dating violence, and injunctions against stalking.

The portion of the bill creating a task force appears to require an unknown state nonrecurring expenditure in FY 2014-15. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Guidelines

Current law provides child support guidelines that a court must use in determining a child support award. After considering all relevant factors, the judge may order a payment that varies from the statutory amount by 5% in either direction. The judge may provide an award that varies by more than 5% only upon a written finding explaining why a payment within 5% of the statutory amount would be unjust or inappropriate.[1]

Substantial Change in Circumstances

Once an award is in place, either party can petition for a change in the child support amount, but only upon a showing of a "substantial change in circumstances." A court may, but is not required to, find that a difference in outcome of at least 15% between the existing monthly obligation and the amount provided for under the guidelines or $50, whichever is greater, is a substantial change in circumstances.[2]

The bill amends s. 61.30(1)(b), F.S., to provide that the court must find that there is a substantial change in circumstances warranting modification of an existing child support award if the difference between the existing monthly obligation and the amount provided for under the guidelines is at least 15% or $50, whichever is greater. If so, no other grounds for modification need be shown.

Imputed Income

In general, child support guidelines are based on a formula that is based on the actual incomes of the parties and the time-sharing arrangement. Where a party refuses to disclose income, or where the court finds that the party could and should earn a better income, the court may impute to that party the court's expectation of income. When imputing income, the court looks to the parent's employment potential and probable earnings based upon recent work history, occupational qualifications, and prevailing earnings level in the community.[3] To impute income, the court must find that the unemployment or underemployment causing the lower actual income is voluntary, unless the court finds a physical or mental incapacity or another circumstance over which the parent has no control.

The bill amends s. 61.30(2)(b), F.S., to require a court to impute income to an unemployed or underemployed parent even if the unemployment or underemployment is not voluntary.

Impact of Parenting Plan on Child Support Calculation

Child support guidelines allow the court to adjust a statutory award based upon certain factors. One such factor is the "parenting plan." Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.[4] The parenting plan is defined by statute, and must be reduced to a document endorsed by the court.[5] The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.[6]

---

[1] Section 61.30(1)(a), F.S.
[2] Section 61.30(1)(b), F.S.
[3] Section 61.30(2), F.S.
[4] Section 61.30(11), F.S.
[5] Section 61.046(14), F.S.
[6] *See State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

Recently, a number of child support cases have turned upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.[7]

The bill amends s. 61.30(11), F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors "a court ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Statewide Task Force on Child Support

The bill creates a statewide task force to examine and analyze the emerging problem of inequity in child support and to review the child support guidelines. The task force will also review the child support guidelines' application in Title IV-D cases and non-Title IV-D cases.[8] The task force is created for the express purpose of collecting, analyzing, and evaluating the dollar amount of child support obligations for each income level, and exploring new methods of calculation. The task force will provide policy recommendations and draft legislative changes considering new methods of calculations for the Legislature.

The task force will consist of the following members or their designates:

- The Executive Director of the Department or Revenue, who will serve as chair;
- The Surgeon General, who will serve as vice chair;
- The Secretary of the Department of Children and Families;
- The executive director of the Department of Law Enforcement;
- A legislator appointed by the President of the Senate;
- A legislator appointed by the Speaker of the House;
- A circuit judge with experience in hearing family law cases, appointed by the Chief Justice;
- A general magistrate with experience in hearing family law cases, appointed by the Chief Justice; and
- Three practicing, board-certified family law attorneys with at least 10 years of experience, appointed by the Governor.

The Department of Revenue must provide staffing for the task force. The task force will hold an organizational meeting by August 1, 2014, and must meet at least twice a year, with additional meetings at the discretion of the chair.

The task force has the following duties:

- Collect and organize data concerning existing child support obligations for each income level.
- Collect and organize data concerning the costs associated with child support modification and orders in the court system.
- Identify available federal, state, and local programs that provide services to individuals under Title IV-D.

---

[7] *Id.*

[8] Title IV-D refers to 42 U.S.C. ss. 651 *et seq.* In the context of this bill, the reference to "Title IV-D cases" appears to reference cases where the state pays the legal fees of certain persons in child support cases. Title IV-D funds are generally supposed to be for a person who is on public assistances, but in practice, it is likely that people who request representation are granted counsel regardless of their means.

- Require the Department of Revenue to report the exact number and cost associated with Title IV-D cases, including individuals who are requesting assistance regardless of nonindigent status.
- Update the information in the 2013 report commissioned by the Florida Legislature by Stefan C. Norbinn et al., "Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature" including, but not limited to:
    - Florida's existing schedule amounts based on the latest available economic data in anticipation of the state continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.
    - Whether the existing schedule needs to be updated to reflect the effects of inflation, recommend the amounts of any such update, and evaluate the methodological validity of this approach.
    - Within the context of models other than the income shares model, determine how selected other states treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.
    - Within the context of models other than the income shares model, evaluate the treatment of low-income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the self-support reserve in the income shares model.
    - Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experience in other states not using the income shares model.
    - Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
    - Itemize the tax benefits and burdens of child support in regard to the child care tax credit.

The task force is required to submit an interim report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by January 15, 2015, and a final report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by February 15, 2015. The authority for the task force is repealed upon submission of the final report or on February 15, 2015, whichever occurs earlier.

Judicial Notice

Judicial notice takes the place of proof, and makes evidence unnecessary.[9] The Florida Evidence Code[10] addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.[11]

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.[12] The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.[13]

In a recent case,[14] a judge issued a domestic violence injunction[15] based upon testimony she observed in a separate court matter between the parties. The ruling was entered without giving advance notice of

[9] *Amos v. Moseley*, 77 So. 619 (Fla. 1917).
[10] Chapter 90, F.S.
[11] Sections 90.201-.207, F.S.
[12] Sections 90.203-.204, F.S.
[13] *Id.*
[14] *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).
[15] Domestic violence injunctions are governed by s. 741.30, F.S.

the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.[16]

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"[17] when:

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within two business days, file a notice in the pending case of the matter judicially noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Judicial Administration.

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence), and 784.0485 (stalking), F.S., to include court records in the evidence a judge may take into account when considering an injunction to prevent domestic violence, repeat violence, or stalking.

B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

Section 2 creates the Statewide Task Force on Child Support.

Section 3 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 4 amends s. 741.30, F.S., regarding domestic violence.

Section 5 amends s. 784.046, F.S., regarding action by victim or repeat violence, sexual violence, or dating violence for protective injunction.

Section 6 amends s. 784.0485, F.S., regarding stalking.

Section 7 provides an effective date of July 1, 2004.

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:

   Section 2 of the bill may require a nonrecurring state fiscal expenditure in FY 2014-25, in order to commission an update to the 2013 report, "Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature." See Fiscal Comments.

[16] *Coe* at 543.
[17] Section 90.202(6), F.S.

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 direct economic impact on the private sector.

D. FISCAL COMMENTS:

Section 2 of the bill: The Department of Revenue has not provided a fiscal analysis for this bill. A similar report on the child support guidelines was commissioned last year at a cost of $250,000.

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

On March 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment replaces the Department of Legal Affairs with the Department of Revenue on the task force, eliminates the per diem for task force members, and provides that the Governor will appoint the private attorneys to the task force. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing that the child support guidelines shall provide the basis for determining whether there is a substantial change in circumstances; providing that the guidelines may serve as the sole basis to support a modification; requiring that monthly income be imputed to all unemployed or underemployed parents, not just those whose unemployment or underemployment was voluntary; providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in the adjustment of awards of child support; creating the Statewide Task Force on Child Support; providing legislative intent; providing for membership; providing for administrative support; providing for meetings; specifying duties; requiring reports; providing for future repeal; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that the term "family cases" has the same meaning as provided

in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (11) of section 61.30, Florida Statutes, are amended to read:

61.30 Child support guidelines; retroactive child support.—

(1)

(b) The guidelines <u>shall</u> ~~may~~ provide the basis for proving a substantial change in circumstances upon which a modification of an existing order <u>will</u> ~~may~~ be granted<u>, such basis may be used as the sole basis to support a modification</u>. However, the difference between the existing monthly obligation and the amount provided for under the guidelines shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances.

(2) Income shall be determined on a monthly basis for each parent as follows:

(b) Monthly income shall be imputed to an unemployed or underemployed parent ~~if such unemployment or underemployment is found by the court to be voluntary on that parent's part~~, absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. ~~In the event of such voluntary unemployment or underemployment,~~ The employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. However, the court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child who is the subject of a child support calculation or as set forth below:

1. In order for the court to impute income at an amount other than the median income of year-round full-time workers as

derived from current population reports or replacement reports published by the United States Bureau of the Census, the court must make specific findings of fact consistent with the requirements of this paragraph. The party seeking to impute income has the burden to present competent, substantial evidence that~~:~~

~~a. The unemployment or underemployment is voluntary; and~~

~~b.~~ identifies the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

2. Except as set forth in subparagraph 1., income may not be imputed based upon:

a. Income records that are more than 5 years old at the time of the hearing or trial at which imputation is sought; or

b. Income at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total

minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule

that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

10. The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties ~~granted by the court~~, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-ordered ~~or agreed~~ time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

Section 2. Statewide Task Force on Child Support.—

(1) The Legislature declares that the purpose of this section is to create a task force to examine and analyze the emerging problem of inequity in child support and review the child support guidelines as provided in ss. 61.29 and 61.30, Florida Statutes, and their application in representation in the court system in Title IV-D cases and non-Title IV-D cases.

(2)(a) There is created within the Department of Revenue the Statewide Task Force on Child Support, a task force as defined in s. 20.03, Florida Statutes. The task force is created for the express purpose of collecting, analyzing, evaluating the

dollar amount of child support obligations for each income level, and exploring new methods of calculation. The task force shall provide policy recommendations and draft legislative changes considering new methods of calculations for the Legislature.

(b) The task force shall consist of the following members, or the member's designee:

1. The executive director of the Department of Revenue, who shall serve as chair.

2. The Surgeon General, who shall serve as vice chair.

3. The Secretary of Children and Families.

4. The executive director of the Department of Law Enforcement.

5. A legislator appointed by the President of the Senate.

6. A legislator appointed by the Speaker of the House of Representatives.

7. A circuit judge with experience in hearing family law cases, appointed by the Chief Justice of the Supreme Court.

8. A general magistrate with experience in hearing family law cases, appointed by the Chief Justice of the Supreme Court.

9. Three practicing, board-certified, family law attorneys who each have at least 10 years of practice experience in the state, appointed by the Governor.

(c) The Department of Revenue shall provide the task force with staff necessary to assist the task force in the performance of its duties.

(3) The task force shall hold its organizational meeting by August 1, 2014. Thereafter, the task force shall meet at least twice per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. A majority of the members of the task force constitutes a quorum.

(4) The task force shall:

(a) Collect and organize data concerning existing child support obligations for each income level.

(b) Collect and organize data concerning the costs associated with child support modification and orders in the court system.

(c) Identify available federal, state, and local programs that provide services to individuals under Title IV-D.

(d) Require the Department of Revenue to report the exact number and cost associated with Title IV-D cases, including individuals who are requesting assistance regardless of nonindigent status.

(e) Update the information in the 2013 report commissioned by the Legislature by Stefan C. Norbinn et al., "Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature" including, but not limited to:

1. Florida's existing schedule amounts based on the latest available economic data in anticipation of the state continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such

data is publicly available.

2. Whether the existing schedule needs to be updated to reflect the effects of inflation, recommend the amounts of any such update, and evaluate the methodological validity of this approach.

3. Within the context of models other than the income shares model, determine how selected other states treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.

4. Within the context of models other than the income shares model, evaluate the treatment of low-income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the self-support reserve in the income shares model.

5. Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experience in other states not using the income shares model.

6. Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.

7. Itemize the tax benefits and burdens of child support in regard to the child care tax credit.

(5) The task force shall submit an interim report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by January 15, 2015, and a final

report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by February 15, 2015.

(6) This section is repealed upon submission of the final report or on February 15, 2015, whichever occurs earlier.

Section 3. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of a matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 4. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification

system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 5. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing

or has received reasonable notice of the hearing.

Section 6. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 7. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Judiciary Committee
Representative Steube offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (11) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

10. The particular parenting plan, <u>a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by</u>

agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in

subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties ~~granted by the court~~, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-

ordered ~~or agreed~~ time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

Section 2. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 3. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 4. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

Section 5. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 6. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:
An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of taking such judicial notice to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 781 Legal Notices
SPONSOR(S): Civil Justice Subcommittee; Powell and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward	Havlicak

SUMMARY ANALYSIS

The publication of legal notices in newspapers is a long established practice for giving notice to the general public of matters such as public sales, pending estates, or businesses' fictitious names, and for service of process upon absent, unknown, or unreachable parties to an action. In most civil cases, when it is required, notice must be published in a newspaper in the county where the lawsuit is filed once a week for four consecutive weeks. Current law provides that a newspaper's website must include the same legal notices that appear in print. A newspaper's legal notice webpage must be clearly titled and free of charge. The Florida Press Association maintains a statewide website for legal notices as a repository for all published notices. The bill:

- Adds that legal notices must be posted on the date that the printed newspaper notice appears in a separate web page entitled, "Legal Notices," "Legal Advertisements," or comparable language;
- Provides that no fee may be charged nor may registration be required for viewing or searching legal notices on the statewide site;
- Requires that a legal notice placed on the statewide website must be searchable by party or case number, be posted for 90 consecutive days, and retained for 18 months; and
- Provides that the newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages.

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

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The publication of legal notices in newspapers is a long established practice. Legal notices and publication in newspapers occur for a variety of cases, such as including notice of a proposed government action,[1] or when a plaintiff has not been able to serve a defendant.[2] Other examples of legal notices include registration of a fictitious name,[3] notice to creditors[4] or notice of unclaimed property[5] in a probate estate. In general, laws addressing constructive service of process by publication are located in ch. 49, F.S., while the laws governing how publication is effected are in ch. 50, F.S.

In civil cases requiring it, publication of a legal notice must be made in a newspaper in the county where the action is filed. All legal notices, unless otherwise specified, are published once a week for four consecutive weeks.[6] Foreclosure proceedings are published once a week for two weeks.[7] Publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language.[8] The newspaper must be entered, or qualified to be admitted and entered, as a periodical matter at a post office in the county where it is published, and be generally available to the public for the publication of notices.[9]

Legal notices must be placed on a newspaper's website on the same day the notice appears in print and the front page of a newspaper's website must have a link to the legal notices webpage.[10] The legal notices webpage must be searchable and free to the public.[11] Fees for placement of official notice and legal advertisement are set forth in statute.[12]

A newspaper is also required to place a legal notice on a statewide website maintained by the Florida Press Association.[13] Any error in the legal notice published on a newspaper's webpage or the statewide website is considered harmless if the printed legal notice was correct.[14]

The bill:

- Adds that legal notices must be posted on the date that the printed newspaper notice appears in a separate web page title "Legal Notices," "Legal Advertisements," or comparable language;
- Provides that no fee may be charged nor may registration be required for viewing or searching legal notices on the statewide site;
- Requires the legal notice placed on the statewide website to:
    - Be accessible and searchable by party name(s) and case number;
    - Be posted for a period of at least 90 consecutive days following the first day of posting publication, and
    - Be maintained in a searchable archive on the website for 18 months; and

---

[1] *See, eg.*, s. 45.031(2), F.S.
[2] Section 49.021, F.S.
[3] Section 865.09 (3), F.S.
[4] Section 733.702(1), F.S.
[5] Section 733.816(1)(b), F.S.
[6] Section 49.10(1)(a), F.S.
[7] Section 49.10(1)(c), F.S.
[8] Section 50.011, F.S.
[9] *Id.*
[10] Section 50.0211(2) and (3), F.S.
[11] Section 50.0211(2), F.S.
[12] Section 50.061, F.S.
[13] Section 50.0211(3), F.S.
[14] Section 50.0211(5), F.S.

- Provides that the newspaper's web pages that contain legal notices shall present the legal notices as the dominant and leading subject matter of those pages.

The proposed changes to s. 50.061, F.S., clarify payment language without a change in substance.

The bill provides an effective date of October 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 50.0211, F.S., relating to internet website publication.

Section 2 amends s. 50.061, F.S., relating to amounts chargeable.

Section 3 provides an effective date of October 1, 2014.

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 proposed changes to ss. 50.0211 and 50.061, F.S., may have a minimal fiscal impact upon the newspaper industry. The industry will be required to provide a searchable database of legal notices at no cost to the public and at no additional cost to those parties who seek the legal publications. The Florida Press Association estimates that the cost associated with making changes to their website to conform to this bill is $3,600, but may increase. The Florida Press Association did not have an estimate for the financial impact this bill will have on newspapers, but did state that only a few newspapers would be affected.[15]

[15] Personal conversation with Sam Morley, General Counsel for the Florida Press Association on March 11, 2014. *See also*, Florida Senate Analysis for CS/SB 834 at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2014s0834.go.DOCX&DocumentType=Analysis&BillNumber=0834&Session=2014 (last reviewed March 19, 2014).

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

On March 25, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed:

- A provision allowing Clerks of Court to link legal advertising to their websites;
- A provision that the printed version of a legal advertisement would prevail in the event of a conflict with the website version; and
- A provision that substantive rights of a party entitled to notice would not be affected by errors in website publication.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to legal notices; amending s. 50.0211, F.S.; requiring legal notices to be posted on a newspaper's website on web pages with specified titles; prohibiting charging a fee or requiring registration for viewing online legal notices; establishing the period for which legal notices are required to be published on the statewide website; requiring that legal notices be archived on the statewide website for a specified period; deleting a provision relating to harmless error; amending s. 50.061, F.S.; clarifying payment provisions; providing an effective date.

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

Section 1. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be posted ~~placed~~ on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or

comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices ~~without charge~~. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must ~~should~~ optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must ~~shall~~ present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must ~~shall~~ contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper ~~This subsection shall take effect July 1, 2013~~.

(3)(a) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website on or after October 1, 2014, for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(4) Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website. ~~This subsection shall take effect July 1, 2013.~~

~~(5) An error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct~~.

Section 2. Subsections (2) and (3) of section 50.061, Florida Statutes, are amended to read:

50.061 Amounts chargeable.—

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that government notices required to be published more than once, the cost of which ~~whose cost~~ is

paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, except that government notices required to be published more than once, the cost of which ~~whose cost~~ is paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

Section 3. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 989 Human Trafficking
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Trujillo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Thomas	Havlicak RH

SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking, using coercion for labor or services, or for commercial sexual activity. In addition to addressing the perpetrators of human trafficking, s. 787.06, F.S., addresses *victims* of human trafficking by providing legislative intent that "victims of trafficking be protected and assisted by this state and its agencies."

The bill amends a variety of statutes that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. Specifically, the bill:

- Amends s. 39.01(67), F.S., to ensure that the definition of "sexual abuse of a child" used in dependency proceedings includes "allowing, encouraging, or forcing a child to participate in commercial sexual activity," as provided in the human trafficking statute;
- Amends s. 92.56, F.S., to protect court records involving human trafficking of a minor for labor or human trafficking for commercial sexual activity;
- Amends s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Amends s. 960.199, F.S., to specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity are eligible for victim relocation assistance.

The bill may result in more victims receiving victim compensation funds from the Department of Legal Affairs. To the extent these victims receive such funds, the bill will impact state expenditures (see Fiscal Impact). The bill does not have a fiscal impact on local governments.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[1] The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.[2] The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.[3]

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.[4] The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.[5] The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.[6]

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.[7]

2012 Florida Legislation on Human Trafficking

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions

---

[1] U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, *available at* http://www.acf.hhs.gov/trafficking/about/index.html# (last visited on March 6, 2014).

[2] *See* U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, *available at* http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm (last visited on March 6, 2014).

[3] Sonide Simon, *Human Trafficking and Florida Law Enforcement,* Florida Criminal Justice Executive Institute, pg. 2, March 2008, *available at* http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx (last visited on March 6, 2014).

[4] *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, *available at* http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited on March 6, 2014).

[5] Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania, 2001, *available at* http://www.sp2.upenn.edu/restes/CSEC.htm (last visited March 6, 2014).

[6] *Id.*

[7] Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators.* Urban Justice Center. The Sex Workers Project, April 3, 2012, *available at* http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf (last visited on March 6, 2014).

prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services, or for commercial sexual activity.[8] In 2012, Florida passed comprehensive legislation that updated and enhanced Florida's human trafficking statutes.[9] The 2012 law:

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for the crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking offenses to the Statewide Prosecutor and the Statewide Grand Jury.

Effect of the Bill

The bill amends a variety of statutes that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. A description of these statutes and the protections they provide follows.

Dependency Proceedings

Chapter 39, F.S., establishes Florida child dependency process, and provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, and adjudication of dependency;
- Disposition of the dependent child;
- Post-disposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and
- Termination of parental rights.

Currently, the definition of "sexual abuse of a child," for purposes of finding a child to be dependent, includes numerous sexual acts, as well as "the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution...." or participating in "the trade of sex trafficking as provided in s. 796.035."[10] Such abused children may be considered dependent[11] by the courts and delivered to the Department of Children and Families for shelter and services in or out of their caregiver's home.[12]

Effect of the Bill

The bill amends the definition of "sexual abuse of a child" in s. 39.01(67), F.S., to replace the reference to "participate in the trade of sex trafficking" with the phrase "participate in commercial sexual activity as provided in s. 787.06(3)(g) or (h)[13] or s. 796.035."[14]

---

[8] Section 787.06(3), F.S.
[9] Chapter 2012-97, L.O.F. This legislation took effect July 1, 2012.
[10] Section 39.01(67), F.S.
[11] Section 39.01(15), F.S.
[12] *See generally* s. 39.013(2), F.S., which gives the circuit court exclusive original jurisdiction over a child found to be dependent.
[13] Section 787.06(3)(g) and (h), F.S., relate to human trafficking for commercial sexual activity of a child under the age of 18.
[14] Section 796.035, F.S., relates to the selling or buying of minors into prostitution.

Confidentiality - Identity and Images of Victims of Sexual Offenses

Section 119.071(2)(h), F.S., provides, in part, that the following criminal intelligence information[15] or criminal investigative information[16] is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution:[17]

- Any information which may reveal the identity of a person who is a victim of sexual abuse;[18]
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether the photograph, videotape, or image identifies the victim.[19]

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of the above-described criminal intelligence information or criminal investigative information must be maintained in court records and in court proceedings.

Currently, a defendant charged with a crime described in ch. 794, F.S. (sexual battery), or ch. 800, F.S. (lewdness and indecent exposure), or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense.[20] Additionally, trial testimony is permitted to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim (unless consented to).[21]

The state may also use a pseudonym instead of a victim's name in cases relating to violations of

- Chapter 794, F.S. (sexual battery);
- Chapter 827, F.S. (child abuse, aggravated child abuse, or sexual performance by a child);
- Chapter 800, F.S. (lewdness and indecent exposure); or
- Any crime involving the production, possession, or promotion of child pornography.[22]

Effect of the Bill

The bill amends s. 92.56, F.S., to permit a defendant charged with human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) to request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense. The bill also:

- Permits trial testimony to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim; and

---

[15] "Criminal intelligence information" is information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S.

[16] "Criminal investigative information" is information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S.

[17] Criminal intelligence information and criminal investigative information do not include: (1) time, date, location, and nature of a reported crime; (2) name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.; (3) time, date, and location of the incident and of the arrest; (4) crime charged; (5) documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant; and (6) informations and indictments except as provided in s. 905.26, F.S. Section 119.011(3)(c), F.S.

[18] Section 119.071(2)(h)1.b., F.S.

[19] Section 119.071(2)(h)1.c., F.S.

[20] The confidential and exempt status of the records may not be used to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. Section 92.56(2), F.S.

[21] Section 92.56(5), F.S.

[22] Section 92.56(3), F.S.

- Allows the state to use a pseudonym instead of a victim's name in such cases.

Victim Compensation

The Florida Crimes Compensation Act (the Act),[23] authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.[24] Currently, s. 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (DLA) administers the assistance program. Under the program, a victim of sexual battery[25] who needs relocation assistance and meets the statutory criteria[26] may receive:

- A one-time payment not exceeding $1,500 on any one claim; and
- A lifetime maximum of $3,000.

Effect of the Bill

The bill amend s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity.

The bill amends s. 960.199, F.S., to specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) are eligible for victim relocation assistance. The bill specifies that a victim's need for assistance must be certified by a rape crisis center or domestic violence center certified in Florida, or by the state attorney or statewide prosecutor having jurisdiction over the offense.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses.

Section 3. Amends s. 787.06, F.S., relating human trafficking.

Section 4. Amends s. 960.065, F.S., relating to eligibility for awards.

Section 5. Amends s. 960.199, F.S., relating to relocation assistance for victims of sexual battery.

Section 6. Provides an effective date.

---

[23] Sections 960.01-960.28, F.S.

[24] http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument (last visited on March 7, 2014).

[25] As defined in s. 794.011, F.S.

[26] The statutory criteria for eligibility is:

- There must be proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state.
- The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

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 includes certain victims of human trafficking within those persons eligible for victim relocation assistance by the Department of Legal Affairs. In 2012, HB 1355 appropriated $1.5 million in nonrecurring general revenue to the Department of Legal Affairs to assist in the relocation of victims of sexual assault. The funds were reappropriated in 2013, and to date, $1.3 million of those funds remain. These funds, if reappropriated, would be the source of payment. If the funds are not reappropriated then the funding would be provided by the Crimes Compensation Trust Fund which could absorb those expenditures. The Crimes Compensation Trust Fund was appropriated $30.3 million in Fiscal Year 2012-13 and had a balance of $14.4 million at the end of that fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The bill does not 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the criminal penalty in the bill for a public employee to disclose information relating to a victim of human trafficking.

On March 19, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that a victim's need for assistance may also be certified by a state certified domestic violence center.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

A bill to be entitled

An act relating to human trafficking; amending s. 39.01, F.S.; including human trafficking in the definition of the term "sexual abuse of a child"; amending s. 92.56, F.S.; including human trafficking within provisions providing for confidentiality of court records concerning certain offenses involving children; amending s. 787.06, F.S.; clarifying the offense of human trafficking; amending s. 960.065, F.S.; providing that victims of human trafficking are eligible for crime victim compensation awards under certain circumstances; amending s. 960.199, F.S.; allowing victims of human trafficking to be eligible for financial relocation assistance; providing an effective date.

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

Section 1. Paragraph (g) of subsection (67) of section 39.01, Florida Statutes, is amended to read:

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

(67) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in

prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in commercial sexual activity ~~the trade of sex trafficking~~ as provided in s. 787.06(3)(g) or (h) or s. 796.035.

Section 2. Subsections (2), (3), and (5) of section 92.56, Florida Statutes, are amended to read:

92.56 Judicial proceedings and court records involving sexual offenses and human trafficking.—

(2) A defendant charged with a crime described in s. 787.06(3)(a) in which the victim is under the age of 18, s. 787.06(3)(b), (d), (f), (g), or (h), chapter 794, or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h) or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information may not be construed to

prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in s. 787.06(3)(a) in which the victim is under the age of 18, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

(5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense described in s. 787.06(3)(a) in which the victim is under the age of 18, s. 787.06(3)(b), (d), (f), (g), or (h), chapter 794, or chapter 800, or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827, but the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has

consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).

Section 3. Subsection (3) of section 787.06, Florida Statutes, is amended to read:

787.06 Human trafficking.—

(3) Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a) Using coercion for labor or services commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Using coercion for commercial sexual activity commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Using coercion for labor or services of any individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Using coercion for commercial sexual activity of any individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Using coercion for labor or services who does so by

the transfer or transport of any individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which any child under the age of 18 is involved commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 18 years.

(h) For commercial sexual activity in which any child under the age of 15 is involved commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 15 years.

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

Section 4. Paragraph (b) of subsection (2) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(2) Any claim filed by or on behalf of a person who:

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based, unless the victim was engaged in prostitution as a result of being a victim of human trafficking as described in s. 787.06(3)(b), (d), (f), (g), or (h);

is ineligible for an award.

Section 5. Section 960.199, Florida Statutes, is amended to read:

960.199 Relocation assistance for victims of sexual battery or human trafficking.—

(1) The department may award a one-time payment of up to $1,500 on any one claim and a lifetime maximum of $3,000 to a victim of sexual battery, as defined in s. 794.011, or a victim of human trafficking, as described in s. 787.06(3)(b), (d), (f), (g), or (h), who needs relocation assistance.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a sexual battery offense or

human trafficking offense, as defined in s. 787.06(3)(b), (d), (f), (g), or (h), was committed.

(b) The sexual battery offense or human trafficking offense, as defined in s. 787.06(3)(b), (d), (f), (g), or (h), must be reported to the proper authorities.

(c) The victim's need for assistance must be certified by a ~~certified~~ rape crisis center or domestic violence center certified in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense.

(d) The center's ~~center~~ certification must assert that the victim is cooperating with law enforcement officials, if applicable, which assertion must be approved by the state attorney or statewide prosecutor, as appropriate, and must include documentation that the victim has developed a safety plan.

(e) The act of sexual battery or human trafficking, as described in s. 787.06(3)(b), (d), (f), (g), or (h), must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

(3) Relocation payments for a sexual battery or human trafficking claim under this section shall be denied if the department has previously approved or paid out a domestic violence relocation claim under s. 960.198 to the same victim regarding the same incident.

Section 6. This act shall take effect October 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Trujillo offered the following:

Amendment

Remove lines 162-171 and insert:

(c) The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a state certified domestic violence center.

(d) The center's ~~center~~ certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense as specified in s. 787.06(3)(b), (d), (f), (g), or (h), the certified rape crisis center's or certified domestic violence

center's certification shall include approval of the state attorney or statewide prosecutor, attesting that the victim is cooperating with law enforcement officials, if applicable.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1047 Termination of Pregnancies
SPONSOR(S): Health & Human Services Committee; Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 918

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee	12 Y, 5 N, As CS	McElroy	Calamas
2) Judiciary Committee		Ham-Warren	Havlicak

SUMMARY ANALYSIS

In *Planned Parenthood v. Casey,* the U.S. Supreme Court rejected the trimester framework established in *Roe v. Wade* and, instead, established viability as the point at which a state may regulate abortion. Similarly, in *In re T.W.,* the Florida Supreme Court held that the state may regulate abortion once fetal viability has been achieved.

Currently, Florida adheres to the trimester framework, as ch. 390, F.S., prohibits individuals from performing an abortion after the 24th week of pregnancy (third trimester). CS/HB 1047 amends ch. 390, F.S., to create s. 390.01112, F.S., relating to abortions during viability. The bill prohibits an abortion (with limited exceptions) if the fetus has achieved viability, which is defined in the bill as the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

Section 390.0111, F.S., currently provides exceptions to the prohibition against abortions during the third trimester when two physicians certify in writing that an abortion is medically necessary to save the life or protect the health of the pregnant woman, or one physician certifies in writing to the medical necessity for legitimate emergency medical procedures for an abortion, and another physician is not available for consultation. The bill modifies these exceptions to allow an abortion during the third trimester if:

- Two physicians certify, in writing, that, in reasonable medical judgment, the abortion is medically necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition; or
- One physician certifies, in writing, that, in reasonable medical judgment, legitimate emergency medical procedures for an abortion are medically necessary to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition and another physician is not available for consultation.

The bill provides identical exceptions to the prohibition against abortions during viability.

The bill requires a physician to determine if a fetus is viable before performing an abortion. The physician must document in the pregnant woman's medical record, the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

The bill provides for administrative and criminal penalties against any person who performs, or actively participates in an abortion during viability, and amends s. 797.03, F.S., to prohibit any person from performing or assisting in an abortion on a person during viability other than in a hospital.

Finally, the bill includes severability and reversion clauses.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Case Law on Abortion

Right to Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*[1], was decided by the U.S. Supreme Court. Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly tailored.[2] In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.[3]

The Viability Standard

In *Roe v. Wade*, the U.S. Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.[4] The Court held that states could not regulate abortions during the first trimester of pregnancy. With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions is permitted during the second trimester. Only at the beginning of the third trimester of pregnancy does the state's interest in the life of the fetus become compelling so as to allow it to prohibit abortions. Even then, the Court requires states to permit an abortion in circumstances necessary to preserve the health or life of the mother.[5]

The current viability standard is set forth in *Planned Parenthood v. Casey*.[6] Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the U.S. Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion pre-viability.[7] Thus, while upholding the underlying holding in *Roe*, which authorizes states to "[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]"[8] the Court determined that the line for this authority should be drawn at "viability," because "..... there may be some medical developments that affect the precise point of viability...but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter."[9] Furthermore, the Court recognized that "in some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child."[10]

---

[1] *Roe v. Wade*, 410 U.S. 113 (1973).
[2] *Id.*
[3] *Casey*, 505 U.S. 833 (1992).
[4] *Roe*, 410 U.S. 113 (1973).
[5] *Id.* at 164-165.
[6] *Casey*, 505. U.S. 833 (1992).
[7] The standard developed in the Casey case was the "undue burden" standard, which provides that a state regulation cannot impose an undue burden on, meaning it cannot place a substantial obstacle in the path of, the woman's right to choose. *Id.* at 876-79.
[8] *See Roe*, 410 U.S. at 164-65.
[9] *See Casey*, 505 U.S. at 870.
[10] *Id.*

The Medical Emergency Exception

In *Doe v. Bolton*, the U.S. Supreme Court was faced with determining, among other things, whether a Georgia statute criminalizing abortions (pre- and post-viability), except when determined to be necessary based upon a physician's "best clinical judgment," was unconstitutionally void for vagueness for inadequately warning a physician under what circumstances an abortion could be performed.[11] In its reasoning, the Court agreed with the District Court decision that the exception was not unconstitutionally vague, by recognizing that:

> The medical judgment may be exercised in the light of all factors-physical, emotional, psychological, familial, and the woman's age-relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.

This broad determination of what constituted a medical emergency was later tested in *Casey*[12], albeit in a different context. One question before the Supreme Court in *Casey* was whether the medical emergency exception to a 24-hour waiting period for an abortion was too narrow in that there were some potentially significant health risks that would not be considered "immediate."[13] The exception in question provided that a medical emergency is:

> That condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.[14]

In evaluating the more objective standard under which a physician is to determine the existence of a medical emergency, the Court in *Casey* determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman's right to choose.[15]

Florida Law on Abortion

Right to Abortion

Article I, s. 23 of the Florida Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[16]

In *In re T.W.*, the Florida Supreme Court ruled that:

> [P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in

[11] *Doe v. Bolton*, 410 U.S. 179 (1973). Other exceptions, such as in cases of rape and when, "[t]he fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect." *Id.* at 183. *See also, U.S. v. Vuitich*, 402 U.S. 62, 71-72 (1971)(determining that a medical emergency exception to a criminal statute banning abortions would include consideration of the mental health of the pregnant woman).
[12] *Casey*, 505. U.S. 833 (1992).
[13] *Id.* at 880.
[14] *Id.* at 879.
[15] *Id.* at 880.
[16] *In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989).

time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.[17]

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child if the mother's health is not in jeopardy.[18]

Abortion Regulation

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[19] An abortion must be performed by a physician[20] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[21]

Section 390.0111, F.S., prohibits an abortion from being performed during the third trimester.[22] Exceptions to this prohibition exist when the abortion is necessary to protect the health of the pregnant woman which is established if:

- Two physicians certify in writing that, to a reasonable degree of medical probability, the abortion is necessary to save the life or preserve the health of the pregnant woman; or
- One physician certifies in writing to the medical necessity for legitimate *emergency* medical procedures for an abortion in the third trimester, and another physician is not available for consultation.[23]

The Department of Health (DOH) and its professional boards regulate healthcare practitioners under ch. 456, F.S., and various individual practice acts.[24] A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the DOH.[25] Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

The Agency for Health Care Administration (AHCA) licenses and regulates abortion clinics in the state, under ch. 390, F.S., and part II of ch. 408, F.S.[26] All abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion may only be performed in a validly licensed hospital, abortion clinic, or in a physician's office;[27]
- An abortion clinic must be operated by a person with a valid and current license;[28]
- A third trimester abortion may only be performed in a hospital;[29]
- Proper medical care must be given and used for a fetus when an abortion is performed during viability;[30]

---

[17] *Id.* at 1193-94.
[18] *Id.* at 1194.
[19] Section 390.011(1), F.S.
[20] Section 390.0111(2), F.S.
[21] Section 390.011(8), F.S.
[22] Section 390.011(9), F.S., defines the third trimester to mean the weeks of pregnancy after the 24th week of pregnancy.
[23] Section 390.0111(1)(a) and (b), F.S.
[24] Section 456.004, F.S.
[25] Section 456.001, F.S.
[26] Section 408.802(3), F.S., provides for the applicability of the Health Care Licensing Procedures Act to abortion clinics.
[27] Section 797.03 (1), F.S.
[28] Section 797.03 (2), F.S.
[29] Section 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor. A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.

- Experimentation on a fetus is prohibited;[31]
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent;[32]
- Consent includes verification of the fetal age via ultrasound imaging;[33]
- Fetal remains are to be disposed of in a sanitary and appropriate manner;[34] and,
- Parental notice must be given 48 hours before performing an abortion on a minor,[35] unless waived by a parent or otherwise ordered by a judge.

In addition, pursuant to s. 390.012, F.S., AHCA is directed to prescribe standards for abortion clinics that include:

- Adequate private space for interviewing, counseling, and medical evaluations;
- Dressing rooms for staff and patients;
- Appropriate lavatory areas;
- Areas for pre-procedure hand-washing;
- Private procedure rooms;
- Adequate lighting and ventilation for procedures;
- Surgical or gynecological examination tables and other fixed equipment;
- Post-procedure recovery rooms that are equipped to meet the patients' needs;
- Emergency exits to accommodate a stretcher or gurney;
- Areas for cleaning and sterilizing instruments;
- Adequate areas for the secure storage of medical records and necessary equipment; and
- Conspicuous display of the clinic's license.[36]

Both DOH and AHCA have authority to take licensure action against individuals and clinics that are in violation of statutes or rules.[37]

Florida Abortion Statistics

In 2013, DOH reported that there were 214,405 live births in the state of Florida.[38] In the same year, AHCA reported that there were 71,503 abortion procedures performed in the state.[39] Of those performed:

- 65,098 were performed in the first trimester (12 weeks and under);
- 6,405 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).[40]

The majority of the procedures (65,210) were elective.[41] The remainder of the abortions were performed due to:

---

[30] Section 390.0111(4), F.S.
[31] Section 390.0111(6), F.S.
[32] Section 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.
[33] Section 390.0111(3)(a)1.b., F.S.
[34] Section 390.0111(7), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor. A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[35] Section 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.
[36] Section 390.012(3)(a)1., F.S. Rules related to abortion are found in ch. 59A-9, F.A.C.
[37] Section 390.018, F.S.
[38] Florida Department of Health, *Florida Vital Statistics Annual Reports- Births,* on file with the Health & Human Services Committee Staff.
[39] Section 390.0112(1), F.S., currently requires the director of any medical facility in which any pregnancy is terminated to submit a monthly report to AHCA that contains the number of procedures performed, the reason for same, and the period of gestation at the time such procedures were performed.
[40] *Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation for Calendar Year 2013*, AHCA, on file with the Health Quality Subcommittee Staff.

- Emotional or psychological health of the mother (85);
- Physical health of the mother that was not life endangering (92);
- Life endangering physical condition (43);
- Incest (2);
- Rape (240);
- Serious fetal genetic defect, deformity, or abnormality (493); and
- Social or economic reasons (5,338).[42]

Viability

Current law defines "viability" as that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.[43] Twenty-one states currently place limits on abortions after the fetus is viable.[44]

Traditionally, fetal weight and gestational age have been the primary factors in determining viability. The gestational age of a viable fetus has become earlier in the pregnancy over time. In 1935, the American Academy of Pediatrics defined a premature infant as one who weighed less than 2,500 grams at birth regardless of gestational age.[45] Although no minimum weight for viability was established, 1,250 grams was frequently used and corresponded to an estimated gestational age of 28 weeks.[46]

As continuous positive airway pressure and neonatal total parenteral nutritional therapy became increasingly mainstream, the medical definition of viability continued to evolve as well. By the 1980s, survival of infants who were born weighing 500 to 700 grams or were of 24 to 26 weeks' gestation became an expected possibility in regional neo-natal intensive care units.[47] The 1980s and 1990s brought new waves of neonatal biomedical advances, led by tracheal instillation of surfactant for respiratory distress syndrome and the use of antenatal corticosteroids in women with imminent delivery of a preterm infant at 24 to 34 weeks' gestation.[48] With these changes, survival of infants born at 23 and 24 weeks' estimated gestational age became increasingly frequent.[49]

More recent research indicates that "consideration of multiple factors is likely to promote treatment decisions that are less arbitrary, more individualized, more transparent, and better justified than decisions based solely on gestational-age thresholds."[50] Thus, physicians also rely on fetal sex, plural or single fetus pregnancy status, and exposure or non-exposure to antenatal corticosteroids, in addition to age and weight. Research on these five factors has identified survivability trends.[51] Viability generally increases with age, although the benefit of a 1-week increase in gestational age varies by week, and with weight (per each 100-gram increment).

---

[41] *Id.*
[42] *Id.*
[43] Section 390.0111(4), F.S.
[44] These states include Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Ohio, Tennessee, Utah, Washington, Wisconsin, and Wyoming. *See* Guttmacher Institute State Policies in Brief *State Policies on Later Abortions*, as of February 1, 2014, found at: http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf (Last visited April 1, 2014).
[45] *See Limits of Human Viability in the United States: A Medicolegal Review*, Bonnie Hope Arzuaga, MD and Ben Hokew Lee, MD, MPH, MSCR, Pediatrics Perspectives, published online November 1, 2011, available at: http://pediatrics.aappublications.org/content/128/6/1047.full (Last visited April 1, 2014).
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Intensive Care for Extreme Prematurity - Moving Beyond Gestational Age*, Jon E. Tyson, M.D., M.P.H., Nehal A. Parikh, D.O., John Langer, M.S., Charles Green, Ph.D., and Rosemary D. Higgins, M.D., N. Engl. J. Med. 2008; 358: pp. 1672-1681, at p. 1680, April 17, 2008.
[51] *Id.* at 1672.

Viability is also likelier for female sex fetuses, for fetuses with any use of antenatal corticosteroids, and for single fetuses.[52]

Effect of Proposed Changes

Abortion After Viability

The bill creates s. 390.01112, F.S., relating to abortions during viability. The bill prohibits an abortion on a viable fetus, with certain exceptions.

The bill defines "viable" or "viability" as the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures. The bill defines "standard medical measures" as the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

The bill requires a physician to determine, in reasonable medical judgment, if a fetus is viable before performing an abortion. "Reasonable medical judgment" is defined by the bill as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

To satisfy this requirement, a physician must perform a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required under s. 390.0111(3), F.S., an examination of the fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

Exceptions to Prohibited Abortions

Currently, s. 390.0111(1)(a), F.S., provides an exception to the prohibition against abortions during the third trimester if two physicians certify in writing to the fact that the abortion is necessary to save the life or preserve the health of the pregnant woman. The bill amends this section to allow an abortion if two physicians certify in writing that the abortion, in reasonable medical judgment, is necessary to save the life or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. The bill expressly excludes psychological conditions from this exception. The bill creates s. 390.01112, F.S., which provides an identical exception to the ban against abortions during viability.

Currently, s. 390.0111(1)(b), F.S., provides an exception to the prohibition against abortions during the third trimester if a physician certifies in writing to the medical necessity for legitimate *emergency* medical procedures for an abortion in the third trimester, and another physician is not available for consultation. The bill requires the physician to certify in writing that, in reasonable medical judgment, legitimate *emergency* medical procedures for an abortion are medically necessary to save the pregnant woman's life or to a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman, and another physician is not available for consultation. The bill expressly excludes

[52] *Id.* These survivability trends have been developed into viability measurement tools, for use by clinicians in determining which extremely preterm infants would benefit from intensive care at birth. See, U.S. Department of Health and Human Services, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Pregnancy and Perinatology Branch, Neonatal Research Network, "Extremely Preterm Birth Outcome Data", Nov. 30, 2012. Found at: http://www.nichd.nih.gov/about/org/der/branches/ppb/programs/epbo/pages/epbo_case.aspx, (Last visited April 1, 2014).

psychological conditions from this exception. The bill creates s. 390.01112, F.S., which provides an identical exception to the ban against abortions during viability.

Standard of Care

Section 390.0111(4), F.S., currently establishes the standard of medical care to be applied when an abortion is performed during viability. It requires that the physician performing the abortions exercise the same skill, care, and diligence to preserve the life and health of the fetus that would be required had it been intended to be born and not aborted. It also requires a physician to treat the preservation of the pregnant woman's life and health as the overriding and superior concern when performing an abortion. The bill amends this section so that this standard of care applies only to an abortion performed during the third trimester. However, the bill creates s. 390.01112, F.S., which establishes that this standard of care is also applicable to an abortion performed during viability.

Administrative and Criminal Penalties

Currently, under s. 390.0111(10), F.S., any person who performs, or actively participates in, an abortion in violation of s. 390.0111, F.S., commits a third degree felony.[53] The bill expands the applicability of this penalty to include any person who performs, or actively participates in, an abortion in violation of s. 390.01112, F.S. Thus, anyone who violates the requirements for an abortion during viability commits a third degree felony.

Currently, under s. 390.0111(14), F.S., failure to comply with the requirements of s. 390.0111, F.S., constitutes grounds for disciplinary action under each practice act and under s. 456.072, F.S. The bill expands the applicability of this penalty to include any person who fails to comply with the requirements of s. 390.01112, F.S. Thus, failure to comply with the requirements for an abortion during viability constitutes grounds for disciplinary action under each practice act and under s. 456.072, F.S.

Section 797.03, F.S., currently prohibits any person from performing or assisting in an abortion in the third trimester other than in a hospital. The bill extends this prohibition to include any person performing or assisting in an abortion on a person during viability other than in a hospital.

Severability and Reversion

The bill includes a severability clause which requires the provisions of the abortion act to be severed if any provision or its application to any person or circumstance is held invalid.

The bill also includes a reversion clause. Under this clause, the amendments made by this act to s. 390.011, F.S., and subsections (4), (10), and (13) of s. 390.0111, F.S., will be repealed and will revert to the law as it existed on January 1, 2014, if s. 390.01112, F.S., is found unconstitutional and severed by a court.

B. SECTION DIRECTORY:

Section 1: Amends s. 390.011, F.S., relating to definitions.
Section 2: Amends s. 390.0111, F.S., relating to termination of pregnancies.
Section 3: Creates s. 390.01112, F.S., relating to termination of pregnancies during viability.
Section 4: Amends s. 797.03, F.S., relating to prohibited acts; penalties.
Section 5: Provides severability and reversion clauses.
Section 6: Provides for an effective date of July 1, 2014.

[53] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGE

On March 27, 2014, the Health & Human Services Committee adopted an amendment to HB 1047. The amendment:

- Establishes "reasonable medical judgment" as the standard to be used by a physician when determining whether a fetus is viable and whether an exception to the prohibitions on abortions during viability and the third trimester is applicable; and

- Defines "reasonable medical judgment" as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

The bill was reported favorably as a Committee Substitute. This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to the termination of pregnancies; amending s. 390.011, F.S.; defining the terms "reasonable medical judgment," "standard medical measure," and "viability"; amending s. 390.0111, F.S.; revising the circumstances under which a pregnancy in the third trimester may be terminated; providing the standard of medical care for the termination of a pregnancy during the third trimester; providing criminal penalties for a violation of s. 390.01112, F.S.; authorizing administrative discipline for a violation of s. 390.01112, F.S., by certain licensed professionals; creating s. 390.01112, F.S.; prohibiting the termination of a viable fetus; providing exceptions; requiring a physician to perform certain examinations to determine the viability of a fetus; providing the standard of care for the termination of a viable fetus; amending s. 797.03, F.S.; prohibiting an abortion of a viable fetus outside of a hospital; providing for severability; providing for a contingent future repeal and reversion of law; providing an effective date.

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

Section 1. Subsection (9) of section 390.011, Florida

Statutes, is renumbered as subsection (11), and new subsections (9), (10), and (12) are added to that section, to read:

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

(9) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(10) "Standard medical measure" means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life-sustaining support, if the fetus were born at the same stage of fetal development.

(12) "Viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

Section 2. Subsections (1), (4), (10), and (13) of section 390.0111, Florida Statutes, are amended to read:

390.0111 Termination of pregnancies.—

(1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—No termination of pregnancy shall be performed on any human being in the third trimester of pregnancy unless one of the following conditions is met:

(a) Two physicians certify in writing ~~to the fact~~ that, in

reasonable medical judgment ~~to a reasonable degree of medical probability~~, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. ~~or preserve the health of the pregnant woman; or~~

(b) The physician certifies in writing that, in reasonable medical judgment, there is a ~~to the~~ medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition ~~in the third trimester~~, and another physician is not available for consultation.

(4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER ~~DURING VIABILITY~~.—If a termination of pregnancy is performed in the third trimester, the physician performing ~~during viability, no person who performs or induces~~ the termination of pregnancy must exercise the same ~~shall fail to use that~~ degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician ~~such person~~ would be required to exercise in order to preserve the life and health of a ~~any~~ fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the pregnant woman, the physician must consider preserving the woman's life and health

the overriding and superior concern ~~"Viability" means that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. Notwithstanding the provisions of this subsection, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.~~

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy ~~procedure~~ in violation of the requirements of this section or s. 390.01112 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy ~~procedure~~ in violation of ~~the provisions of~~ this section or s. 390.01112 which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(13) FAILURE TO COMPLY.—Failure to comply with the requirements of this section or s. 390.01112 constitutes grounds for disciplinary action under each respective practice act and under s. 456.072.

Section 3. Section 390.01112, Florida Statutes, is created to read:

390.01112 Termination of pregnancies during viability.—

(1) No termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability, unless:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(2) Before performing a termination of pregnancy, a physician must determine if the fetus is viable by, at a minimum, performing a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required under s. 390.0111(3), an examination of the fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

(3) If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus that the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

Section 4. Subsection (3) of section 797.03, Florida Statutes, is amended to read:

797.03 Prohibited acts; penalties.—

(3) It is unlawful for any person to perform or assist in performing an abortion on a person during viability or in the third trimester other than in a hospital.

Section 5. Severability and reversion.—

(1) If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(2) Notwithstanding subsection (1), if s. 390.01112, Florida Statutes, is held unconstitutional and severed by a court having jurisdiction, the amendments made by this act to s. 390.011, Florida Statutes, and subsections (4), (10), and (13)

of s. 390.0111, Florida Statutes, will be repealed and will revert to the law as it existed on January 1, 2014.

Section 6. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1397 Florida Uniform Collaborative Law Act
SPONSOR(S): Civil Justice Subcommittee; La Rosa
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Cary	Bond
2) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

The Uniform Law Commission (ULC) provides model statutes that are designed to be consistent from state to state. The ULC develops model statutes in many different areas of law to create uniformity in the law between jurisdictions. One such model statute is the Uniform Collaborative Law Act of 2009 (amended in 2010), which regulates the use of collaborative law, a form of alternative dispute resolution.

Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law is only to be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve the issues, the parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure. The concept requires extensive confidentiality and privileges to be created by statute, while the courts must develop rules of practice and procedure to conform.

The bill creates the Florida Uniform Collaborative Law Act. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective should the Supreme Court of Florida promulgate rules to enact a collaborative law process in Florida. The bill primarily serves to provide the grounds for beginning and concluding a collaborative law process and to provide the necessary statutory privileges and confidentiality of communications required for the collaborative law process.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Law Commission (ULC) provides model statutes that are designed to be consistent from state to state. Florida's commissioners to the ULC are appointed to 4-year terms by the Governor and confirmed by the Senate.[1] The ULC develops model statutes in many different areas of law to create uniformity in the law between jurisdictions.

One such model statute is the Uniform Collaborative Law Act of 2009 (amended in 2010), which regulates the use of collaborative law, a form of alternative dispute resolution. According to the ULC:

> At its core Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure, and, as is the case in mediation, information disclosed in a collaborative process is privileged against use in any subsequent litigation.
>
> Collaborative Law is currently being practiced in all American jurisdictions as well as in a number of foreign countries. In the U.S., Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethic opinions. The Uniform Collaborative Law Rules/Act ("UCLR/A") is intended to create a uniform national framework for the use of Collaborative Law—one which includes important consumer protections and enforceable privilege provisions. Collaborative Law under the ULCR/A is strictly voluntary. Attorneys are not required to offer collaborative services, and parties cannot be compelled to participate.[2]

Seven states[3] plus Washington, D.C., have enacted the Uniform Collaborative Law Act, while bills are pending in six other states.[4]

Florida currently recognizes forms of alternative dispute resolution and is considered a leader among states in that regard.[5] Florida public policy favors arbitration[6] and "mediation and settlement of family law disputes is highly favored in Florida law."[7]

Collaborative law is a non-adversarial alternative dispute resolution concept similar to mediation to promote problem-solving and solutions in lieu of litigation. Collaborative law is entirely voluntary and counsel retained for the purpose of collaborative law is only to be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve

---

[1] Section 11.249, F.S.
[2] Uniform Law Commission, Uniform Collaborative Law Rules/Act Short Summary. Found at http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf (last viewed March 20, 2014).
[3] Washington, Nevada, Utah, Texas, Hawaii, Alabama, and Ohio.
[4] Illinois, Massachusetts, Michigan, New Jersey, Oklahoma, and South Carolina.
[5] Fran L. Tetunic, *Demystifying Florida Mediator Ethics: the Good, the Bad, and the Unseemly*, 32 Nova L. Rev. 205, 244 (Fall, 2007).
[6] *Shotts v. OP Winter Haven, Inc.*, 86 So.3d 456 (Fla. 2011).
[7] *Griffith v. Griffith*, 860 So.2d 1069, 1073 (Fla. 1st DCA 2003).

the issues, the parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure, therefore, extensive confidentiality and privileges are created by statute, while the courts develop rules of practice and procedure.[8]

Effect of the Bill

The bill redesignates ch. 44, F.S., as "Alternatives to Judicial Action and creates Part II of ch. 44, F.S., the Florida Uniform Collaborative Law Act and s. 44.52, F.S., to provide definitions. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective should the Supreme Court of Florida promulgate rules to enact a collaborative law process. More specifically, the bill becomes effective 30 days after the Supreme Court approves and publishes Rules of Professional Conduct, governing:

- The mandatory disqualification of a collaborative attorney and other attorneys in the same firm from appearing before a tribunal in a proceeding relating to the same matter as the collaborative law matter; and
- Limited exemptions to mandatory disqualification to seek emergency orders in certain limited circumstances.

and approves and publishes Family Law Rules of Procedure, governing:

- Required elements of a collaborative law participation agreement defining the commencement, procedures, and termination of the collaborative law process; and
- The stay of ongoing proceedings upon referral to a collaborative law process and related status reports.

The Legislature may not create rules or procedures relating to litigation, as this would violate the separation of powers and the Court's exclusive right to "adopt rules for the practice and procedure in all courts . . ."[9] However, should the Court decide to promulgate rules consistent with this bill and the uniform act, this bill provides substantive privileges and confidentiality for parties and nonparties involved in a collaborative law process.

Beginning and Concluding a Collaborative Law Process

The bill creates s. 44.53, F.S., to provide conditions upon which a collaborative law process begins and concludes. The bill provides that a tribunal may not order a party to participate in a collaborative law process over that party's objection and a party may terminate the collaborative law process with or without cause. The process begins when the parties enter into a collaborative participation agreement. If a legal proceeding is pending, the proceeding is put on hold while the collaborative law process is ongoing.

A collaborative law process is concluded in one of four ways. First, the parties may provide for a method by agreement. Second, the parties may sign a record providing a resolution of the matter. Third, the parties may sign a record indicating resolution of certain matters while leaving other matters unresolved. Fourth, the process is concluded by a termination of the process, evidenced when a party:

- Gives notice to other parties that the process is ended;
- Begins a legal proceeding related to a collaborative law matter without the agreement of all the parties;
- Initiates a pleading, motion, order to show cause, or request for a conference with a tribunal in a pending proceeding related to the matter;

[8] See the Uniform Law Commission Collaborative Law Summary website for more information at http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative Law Act (last viewed March 20, 2014).
[9] Art. V, s. 2, FLA. CONST.

- Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to the matter or takes a similar action requiring notice to be sent to the parties; or
- Discharges a collaborative lawyer or a collaborative lawyer withdraws.

A party's collaborative lawyer must give prompt notice to all other parties in a record of a discharge or withdrawal.

Under certain conditions, a collaborative law process may survive the discharge or withdrawal of a collaborative lawyer:

- The unrepresented party engages a successor collaborative lawyer;
- The parties consent in a signed record to continue the process;
- The agreement is amended to identify the successor collaborative lawyer; and
- The successor collaborative lawyer confirms representation in a signed record.

Confidentiality of Collaborative Law Communication

The bill creates s. 44.54, F.S., to provide that a collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as otherwise provided by law, with limitations as discussed below.

Privilege Against Disclosure for Collaborative Law Communications

The bill creates s. 44.54(1), F.S., to provide a privilege against disclosure for collaborative law communications, within limits provided in the bill. A collaborative law communication is not subject to discovery or admissible in evidence in a proceeding before a tribunal. Each party (including a party's attorney during the collaborative law process) has a privilege to refuse to disclose a collaborative law communication and to prevent any other person from disclosing a communication. A nonparty to the collaborative law process (which is anybody other than the party or the party's attorney, in this context) may also refuse to disclose any communication or may prevent any other person from disclosing the nonparty's communication. Therefore, a party has an absolute privilege as to all communications, while the nonparty has a privilege for his or her own communications. However, evidence that would otherwise be admissible does not become inadmissible or protected from discovery solely because it may have been a communication during a collaborative law process. The privilege does not apply if the parties agree in advance in a signed record or if all parties agree in a proceeding that all or part of a collaborative law process is not privileged, so long as the parties had actual notice before the communication was made.

Waiver and Preclusion of Privilege

The bill creates s. 44.54(2), F.S., to provide that a privilege may be expressly waived either orally or in writing during a proceeding if all the parties agree. If a nonparty has a privilege, the nonparty must also agree to waive the privilege. However, if a person makes a disclosure or representation about a collaborative law communication that prejudices another person during a proceeding before a tribunal, that person may not assert a privilege to the extent that it is necessary for the prejudiced person to respond.

Limits of Privilege

The bill creates s. 44.54(3), F.S., to provide that a privilege does not apply to a collaborative law communication that is:

- Available to the public under Florida's Public Records statutes in ch. 119, F.S.;
- Made during a collaborative law session that is open to the public or required by law to be open to the public;

- A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- Intentionally used to plan or commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- In an agreement resulting from the collaborative process if there is a record memorializing the agreement, signed by all of the parties.

A privilege does not apply to the extent that the communication is sought or offered to prove or disprove:

- A claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or
- Abuse, neglect, abandonment, or exploitation of a child or adult, unless the Florida Department of Children and Families is a party or otherwise participates in the collaborative law process.

Only the portion of the communication needed for proof or disproof may be disclosed or admitted.

There are other limited circumstances where a privilege does not apply that require the discretion of the judge or tribunal (hereinafter, judge). A party seeking discovery or a proponent of certain evidence may show that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is either in a court proceeding involving a felony or a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or where a defense is asserted to avoid liability on the contract. Only the portion of the communication needed for evidence may be disclosed or admitted.

The bill includes cross reference amendments to reflect the creation of a new Part of ch. 44, F.S.

B. SECTION DIRECTORY:

Section 1 contains legislative findings and declarations.

Section 2 creates the "Collaborative Law Act" within ss. 44.51-44.54, F.S.

Section 3 directs the Division of Law Revision and Information redesignate ch. 44, F.S., as "Alternatives to Judicial Action" and to divide ch. 44, F.S., into parts.

Section 4 creates s. 44.51, F.S., relating to purpose of the Act.

Section 5 creates s. 44.52, F.S., relating to definitions.

Section 6 creates s. 44.53, F.S., relating to beginning and concluding a collaborative law process.

Section 7 creates s. 44.54, F.S., relating to confidentiality of a collaborative law communication.

Section 8 directs that the portions of the bill containing privileges is not effective until 30 days after approval and publication of rules by the Supreme Court.

Section 9 amends s. 39.4075, F.S., relating to referral of a dependency case to mediation.

Section 10 amends s. 44.1011, F.S., relating to definitions.

Section 11 amends s. 44.102, F.S., relating to court-ordered mediation.

Section 12 amends s. 44.106, F.S., relating to standards and procedures for mediators and arbitrators and fees.

Section 13 amends s. 718.401, F.S., relating to leaseholds.

Section 14 amends s. 984.18, F.S., relating to referral of child-in-need-of-services cases to mediation.

Section 15 contains an effective date of July 1, 2014, except as otherwise expressly provided in the Act.

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 direct economic 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 authority, as rulemaking authority is an inherent power of the Supreme Court of Florida under art. V, s. 2 of the Florida Constitution. The bill does "invite" the court to create rules to carry out the purpose of the bill by enacting a collaborative law process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment moves the Act from ch. 90, F.S., to ch. 44, F.S., and provides standards for beginning and concluding a collaborative law process.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to family law; providing legislative findings and intent; providing a short title; providing a directive to the Division of Law Revision and Information; creating s. 44.51, F.S.; declaring the purpose of the act; creating s. 44.52, F.S.; defining terms; creating s. 44.53, F.S.; specifying when a collaborative process commences; providing that a tribunal may not order a party to participate in a collaborative law process over the party's objection; providing conditions under which a collaborative law process is concluded; creating s. 44.54, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that certain provisions of the act are contingent upon approval and publication of court rules governing specified subjects; amending ss. 39.4075, 44.1011, 44.102, 44.106, 718.401, and 984.18, F.S.; conforming provisions to change made by the act; providing effective dates.

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

Section 1. The Legislature finds and declares that the purpose of this act is to:

(1) Create a uniform system of practice of a collaborative

law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures.

(3) Preserve the working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 2. Sections 44.51-44.54, Florida Statutes, may be cited as the "Collaborative Law Act."

Section 3. The Division of Law Revision and Information is directed to redesignate chapter 44, Florida Statutes, as "Alternatives to Judicial Action" and to divide the chapter into part I, consisting of ss. 44.1011-44.406, Florida Statutes, entitled "Arbitration and Mediation" and part II, consisting of ss. 44.51-44.54, Florida Statutes, entitled "Collaborative Law."

Section 4. Section 44.51, Florida Statutes, is created to read:

44.51 Purpose.—The general purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early settlement of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll

of litigation.

Section 5. Section 44.52, Florida Statutes, is created to read:

44.52 Definitions.—As used in this part, the term:

(1) "Collaborative attorney" means an attorney who represents a party in a collaborative law process.

(2) "Collaborative law communication" means an oral or written statement, whether in a record, verbal, or nonverbal, which:

(a) Is made in the conduct of or in the course of participating in, continuing, or reconvening a collaborative law process.

(b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(3) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(4) "Collaborative law process" means a process intended to resolve a collaborative matter without intervention by a tribunal in which persons sign a collaborative law participation agreement and are represented by collaborative attorneys.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution including a dispute, claim, or issue in a proceeding that is described in a collaborative law participation agreement and arises under

chapter 61 or chapter 742, including, but not limited to:

(a) Marriage, divorce, dissolution, annulment, and marital property distribution.

(b) Child custody, visitation, parenting plans, and parenting time.

(c) Alimony, maintenance, and child support.

(d) Parental relocation with a child.

(e) Parentage.

(f) Premarital, marital, and postmarital agreements.

(6) "Law firm" means:

(a) An attorney or attorneys who practice law in a partnership, professional corporation, sole proprietorship, limited liability company, or association; or

(b) An attorney or attorneys employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a governmental entity, subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative attorney, who participates in a collaborative law process.

(8) "Party" means a person who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or

governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(10) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(11) "Prospective party" means a person who discusses with a prospective collaborative attorney the possibility of signing a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

Section 6. Section 44.53, Florida Statutes, is created to read:

44.53 Beginning and concluding a collaborative law process.—

(1) The collaborative process commences, regardless of whether a legal proceeding is pending, when the parties enter into a collaborative participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) Resolution of a collaborative matter as evidenced by a signed record;

(b) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(c) Termination of the process.

(4) A collaborative law process terminates when a party:

(a) Gives notice to other parties in a record that the process is ended;

(b) Begins a proceeding related to a collaborative matter without the agreement of all parties;

(c) Initiates a pleading, motion, order to show cause, or request for a conference with a tribunal in a pending proceeding related to the matter;

(d) Requests that the proceeding be put on the tribunal's

active calendar in a pending proceeding related to the matter;

(e) Takes similar action requiring notice to be sent to the parties in a pending proceeding related to the matter; or

(f) Discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party, except as otherwise provided by subsection (7).

(5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, within 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (5) is sent to the parties:

(a) The unrepresented party engages a successor collaborative lawyer;

(b) The parties consent in a signed record to continue the process by reaffirming the collaborative law participation agreement;

(c) The agreement is amended to identify the successor collaborative lawyer in a signed record; and

(d) The successor collaborative lawyer confirms in a signed record the lawyer's representation of a party in the collaborative.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Section 7. Section 44.54, Florida Statutes, is created to read:

44.54 Confidentiality of a collaborative law communication.—Except as provided in this section, a collaborative law communication is confidential to the extent agreed by the parties in a signed record or as otherwise provided by law.

(1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

(a) Subject to subsections (2) and (3), a collaborative law communication is privileged as provided under paragraph (b), is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

1. A party may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication.

2. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible

or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(2) WAIVER AND PRECLUSION OF PRIVILEGE.—

(a) A privilege under subsection (1) may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, if it is also expressly waived by the nonparty participant.

(b) A person who makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under subsection (1). This preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(3) LIMITS OF PRIVILEGE.—

(a) A privilege under subsection (1) does not apply for a collaborative law communication that is:

1. Available to the public under chapter 119 or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

2. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

3. Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

4. In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privilege under subsection (1) for a collaborative law communication does not apply to the extent that a communication is:

1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the Department of Children and Families is a party to or otherwise participates in the process.

(c) A privilege under subsection (1) does not apply if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

1. A court proceeding involving a felony; or

2. A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense is asserted to avoid liability on the contract.

(d) If a collaborative law communication is subject to an exception under paragraph (b) or paragraph (c), only the part of

the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under paragraph (b) or paragraph (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privilege under subsection (1) does not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person who did not receive actual notice of the agreement before the communication was made.

Section 8. Sections 44.51-44.54, Florida Statutes, as created by this act, shall not take effect until 30 days after approval and publication by the Supreme Court of:

(1) Rules of Professional Conduct, governing:

(a) The mandatory disqualification of a collaborative attorney, and attorneys in the same firm, from appearing before a tribunal to represent a party to a collaborative law process in a proceeding related to the collaborative law matter.

(b) Limited exceptions to mandatory disqualification to seek emergency orders for the protection of the health, safety, welfare, or interest of a party until such time as a successor attorney is available and for continued representation of government entities, subject to certain conditions.

(2) Family Law Rules of Procedure, governing:

(a) Required elements of a collaborative law participation agreement defining the commencement, procedures, and termination of the collaborative law process.

(b) The stay of ongoing proceedings upon referral to a collaborative law process and related status reports.

Section 9. Subsection (1) of section 39.4075, Florida Statutes, is amended to read:

39.4075 Referral of a dependency case to mediation.—

(1) At any stage in a dependency proceeding, any party may request the court to refer the parties to mediation in accordance with part I of chapter 44 and rules and procedures developed by the Supreme Court.

Section 10. Section 44.1011, Florida Statutes, is amended to read:

44.1011 Definitions.—As used in this part ~~chapter~~:

(1) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this part ~~chapter~~.

(2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and

voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. "Mediation" includes:

(a) "Appellate court mediation," which means mediation that occurs during the pendency of an appeal of a civil case.

(b) "Circuit court mediation," which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.

(c) "County court mediation," which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.

(d) "Family mediation" which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their

clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) "Dependency or in need of services mediation," which means mediation of dependency, child in need of services, or family in need of services matters. Negotiations in dependency or in need of services mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required and, in the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

Section 11. Paragraph (a) of subsection (2) of section 44.102, Florida Statutes, is amended to read:

44.102 Court-ordered mediation.—

(2) A court, under rules adopted by the Supreme Court:

(a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:

1. The action is a landlord and tenant dispute that does not include a claim for personal injury.

2. The action is filed for the purpose of collecting a

debt.

3. The action is a claim of medical malpractice.

4. The action is governed by the Florida Small Claims Rules.

5. The court determines that the action is proper for referral to nonbinding arbitration under this part ~~chapter~~.

6. The parties have agreed to binding arbitration.

7. The parties have agreed to an expedited trial pursuant to s. 45.075.

8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

Section 12. Section 44.106, Florida Statutes, is amended to read:

44.106 Standards and procedures for mediators and arbitrators; fees.—The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this part ~~chapter~~. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this part ~~chapter~~.

Section 13. Paragraph (f) of subsection (1) of section

718.401, Florida Statutes, is amended to read:

718.401 Leaseholds.—

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to part I of chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and

has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

Section 14. Subsection (1) of section 984.18, Florida Statutes, is amended to read:

984.18 Referral of child-in-need-of-services cases to mediation.—

(1) At any stage in a child-in-need-of-services proceeding, the case staffing committee or any party may request the court to refer the parties to mediation in accordance with part I of chapter 44 and rules and procedures developed by the Supreme Court.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2014.

STORAGE NAME: h3519a.CJS
DATE: 3/25/2014

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 3519; Relief/Monica Cantillo Acosta & Luis Alberto Cantillo Acosta/Miami-Dade County
Sponsor: Representative Santiago
Companion Bill: SB 52 by Senator Legg
Special Master: Tom Thomas

Basic Information:

Claimants:	Monica Cantillo Acosta and Luis Alberto Cantillo Acosta
Respondent:	Miami-Dade County
Amount Requested:	$940,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County supports the claim bill in the amount of $940,000.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap. Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.
Prior Legislative History:	House Bill 1075 by Representative Steube and Senate Bill 60 by Senator Bogdanoff were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee. House Bill 1485 by Representative Steube and Senate Bill 50 by Senator Bogdanoff were filed during the 2012 Legislative Session. The House Bill passed its committees

of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

House Bill 1413 by Representative Santiago and Senate Bill 188 by Senator Legg were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

Procedural Summary: A civil suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs on November 5, 2007, finding Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be $3 million each. The defendant appealed the jury verdict, however, the parties entered into a settlement agreement while the appeal was pending. The settlement calls for $200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and support for a claim bill in the amount of $940,000.

Facts of Case: On November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus. While Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver accelerated in order to avoid a collision with another vehicle. The driver then hit the brakes, causing Ms. Acosta to fall and strike her head on an interior portion of the bus. Because of the force upon which Ms. Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations. Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day.

Ms. Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother. At the time of the accident, Monica was 21 years old and Luis was 16 years old.

Recommendation: I respectfully recommend House Bill 3519 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: March 25, 2014

cc: Representative Santiago, House Sponsor
Senator Legg, Senate Sponsor

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Nhora Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m., Nhora Acosta entered Miami-Dade County bus number 04142 at a stop on S.W. 8th Street in Miami, paid the driver, and tried to find a seat on the crowded bus, and

WHEREAS, while Nhora Acosta walked toward the rear of the bus in search of a seat, the bus driver, ignoring her safety and failing to appropriately anticipate the stop-and-go traffic patterns on the busy street, accelerated so quickly that, in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, and

WHEREAS, the sudden change in velocity caused Nhora Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, as a result of the fall, Nhora Acosta suffered a

severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

WHEREAS, Nhora Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Nhora Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who had been raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta loved their mother and only parent dearly and have suffered intense mental pain due to their mother's untimely death, and

WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta have also lost the support, love, and guidance of their only parent, Nhora Acosta, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be $3 million each,

and

WHEREAS, the parties have subsequently settled this matter for $1,140,000, and Miami-Dade County has paid the claimants $200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of $470,000, payable to Louis Alberto Cantillo Acosta, as compensation for the wrongful death of their mother, Nhora Acosta.

Section 3. The amount paid by the Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Nhora Acosta. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

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

STORAGE NAME: h3529.CJS
DATE: 3/21/2014

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 3529; Relief/Carl Abbott/Palm Beach County School District
Sponsor: Representative Raburn
Companion Bill: SB 56 by Senator Legg
Special Master: Tom Thomas

Basic Information:

Claimants:	David Abbott, guardian of Carl Abbott
Respondent:	Palm Beach County School Board
Amount Requested:	$1,900,000; to be made in payments of $211,111.11 each fiscal year beginning in 2014 through 2021, inclusive, and $211,111.12 in the 2022-2023 fiscal year.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap. Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.
Prior Legislative History:	House Bill 1487 by Representative Workman and Senate Bill 70 by Senator Negron were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

House Bill 855 by Representative Workman and Senate Bill 54 by Senator Negron were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

House Bill 1167 by Representative Raburn and Senate Bill 22 by Senator Negron were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

Procedural Summary: David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for $2 million, $100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the $1.9 million balance will be paid in eight yearly installments of $211,111.11, plus a ninth and final annual payment of $211,111.12. These yearly payments will commence on the effective date of the claim bill, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments, guaranteeing a minimum payout of $633.333.33. Out of the $100,000 settlement proceeds he has already received, Mr. Abbott paid $25,000 in attorney's fees and, after paying some expenses, netted $51,905.65.

Facts of Case: On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk.

At the time Mr. Abbott began to cross U.S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed north on U.S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U.S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowels and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about $4 million, before a reduction to present value. The school Board is self-insured and will pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of $100,000.

Recommendation: I respectfully recommend House Bill 3529 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: March 21, 2014

cc: Representative Raburn, House Sponsor
Senator Legg, Senate Sponsor

A bill to be entitled

An act for the relief of Carl Abbott by the Palm Beach County School Board; providing for an appropriation to compensate Carl Abbott for injuries sustained as a result of the negligence of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was struck by a school bus driven by an employee of the Palm Beach County School District while Mr. Abbott was crossing the street in a designated crosswalk at the intersection of South Anchorage Drive and U.S. 1 in Palm Beach County, and

WHEREAS, as a result of the accident, Carl Abbott suffered a closed-head injury, traumatic brain injury, subdural hematoma, and subarachnoid hemorrhage, and

WHEREAS, as a result of his injuries, Carl Abbott must now reside in a nursing home, suffers from loss of cognitive function, right-sided paralysis, immobility, urinary incontinence, bowel incontinence, delirium, and an inability to speak, and must obtain nutrition through a feeding tube, and

WHEREAS, the Palm Beach County School Board unanimously passed a resolution in support of settling the lawsuit that was filed in this case, tendered payment of $100,000 to Carl Abbott, in accordance with the statutory limits of liability set forth

in s. 768.28, Florida Statutes, and does not oppose the passage of this claim bill in favor of Carl Abbott in the amount of $1.9 million, as structured, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise appropriated and to draw warrants in the amount of $211,111.11 each fiscal year beginning in 2014 through 2021, inclusive, and $211,111.12 in the 2022-2023 fiscal year for a total of $1.9 million, payable to David Abbott, guardian of Carl Abbott, as compensation for injuries and damages sustained as a result of the negligence of an employee of the Palm Beach County School District. The payments shall cease upon the death of Carl Abbott if he dies before the last payment is made. However, David Abbott, as guardian of Carl Abbott, shall be guaranteed a minimum payment amount of $633,333.33 if Carl Abbott dies within 3 years after the effective date of this act. This amount represents three annual payments and shall be payable on the annual due dates.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amount

awarded under this act are intended to provide the sole compensation for all present and future claims against the Palm Beach County School District arising out of the factual situation that resulted in the injuries to Carl Abbott as described in the preamble to this act. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

STORAGE NAME: h3531.CJS
DATE: 3/21/2014

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 3531; Relief/Ronald Miller/City of Hollywood
Sponsor: Representative Gibbons
Companion Bill: SB 54 by Senator Legg
Special Master: Tom Thomas

Basic Information:

Claimants:	Ronald Miller
Respondent:	City of Hollywood
Amount Requested:	$100,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Agrees that the settlement in this matter and the passage of this claim bill are appropriate.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap. Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.
Prior Legislative History:	House Bill 191 by Representative Gibson and Senate Bill 60 by Senator Rich were filed during the 2009 Legislative Session. Neither of these bills received a hearing. House Bill 519 by Representative Gibson and Senate Bill 44 by Senator Gelber were filed during the 2010 Legislative Session. Neither of these bills received a hearing. House Bill 569 by Representative Cruz and Senate Bill 64 by Senator Siplin were filed during the 2011 Legislative

Session. The House Bill passed its only committee of reference (Civil Justice) but died on the Calendar. The Senate Bill was never heard in any Committee.

House Bill 43 by Representative Jenne and Senate Bill 8 by Senator Sobel were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, but died in the Senate. The Senate Bill was never heard in any Committee.

House Bill 1415 by Representative Gibbons and Senate Bill 44 by Senator Sobel were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

Procedural Summary: In January 2005, Mr. Miller filed suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County. After trial, the jury found in favor of Ronald Miller and a final judgment was entered in the amount of $1,130,731.89, which included approximately $75,000 for past medical bills and $415,000 for future medical expenses, $200,000 for past pain and suffering, and $500,000 for future pain and suffering. A cost Judgment was entered in favor of Mr. Miller for $17,257.82. The City of Hollywood appealed and the Fourth District Court of Appeal affirmed the judgment per curiam. The City has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, F.S. The parties have now settled the matter and the City has agreed to pay Mr. Miller an additional $100,000 to resolve this claim.

Facts of Case: This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center lane, planning on turning left at Sherman Street, the westbound street immediately south of Sheridan Street, traveling at approximately 15 miles-per-hour. At the same time, Robert Mettler, an employee of the City of Hollywood driving a City utilities truck, was exiting a Burger King Restaurant immediately to the right (on the east side of North Federal Highway). Stopped northbound traffic on North Federal Highway parted to allow Mr. Mettler to drive across the two northbound lanes into the center lane. As Mr. Mettler entered the center lane, he turned left in order to merge onto southbound North Federal Highway where he collided head-on into Mr. Miller. Mr. Miller was wearing his seatbelt and did not seek medical treatment at the scene of the accident. Though belted, Mr. Miller later testified that he banged his knees on the dashboard of his truck as a result of the crash impact. Later that night, Mr. Miller went to the emergency room to seek medical treatment.

In March of 2003, Dr. Steven Wender, M.D., performed extensive knee surgery on Mr. Miller (a right knee partial medial and lateral menisectomy and tricompartmental chondroplasty, and a left knee lateral menisectomy and chondroplasty of the medial compartment and lateral compartmental and patella with synovectomy). Mr. Miller developed post-operative complications including pneumonia and deep vein thrombosis. Dr. Wender testified that Mr. Miller will need to have at least one bilateral knee replacement surgery in the future. Mr. Miller did have knee surgeries prior to the accident. The City's expert, Dr. Phillip Averbach, testified at trial that Mr. Miller did not sustain any

permanent orthopedic or neurological injuries related to the accident. Dr. Averbach also testified that he believed at least 90 percent of Mr. Miller's current complaints and injuries were pre-existing to the accident. While there is testimony on both sides of how extensively Mr. Miller was injured as a result of the accident, the parties have agreed to settle the matter.

Recommendation: I respectfully recommend that House Bill 3531 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: March 21, 2014

cc: Representative Gibbons, House Sponsor
Senator Legg, Senate Sponsor

A bill to be entitled

An act for the relief of Ronald Miller by the City of Hollywood; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the City of Hollywood; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on July 30, 2002, Ronald Miller was driving his pickup truck home from work, northbound on Federal Highway in the left-turn lane, and

WHEREAS, at that time, a City of Hollywood employee, Robert Mettler, who was driving a city utilities truck, cut across the lanes of northbound traffic and crashed head-on into Ronald Miller's vehicle, and

WHEREAS, the impact of the crash caused Mr. Miller to have corrective surgeries for damage to both knees, and

WHEREAS, the jury returned a verdict in favor of Ronald Miller, a final judgment was entered in the amount of $1,130,731.89, and a cost judgment was entered in the amount of $17,257.82, and

WHEREAS, the City of Hollywood has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the parties have negotiated in good faith and have arrived at a stipulated resolution of this matter for the

payment by the City of Hollywood of an additional $100,000 to Ronald Miller, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Hollywood is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant, payable to Ronald Miller, for the total amount of $100,000 as compensation for injuries and damages sustained as a result of the negligence of an employee of the City of Hollywood.

Section 3. The amount paid by the City of Hollywood pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries to Ronald Miller. All expenses that constitute a part of Ronald Miller's judgments described in this claim shall be paid from the amount awarded under this act on a pro rata basis. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7037 PCB CJS 14-02 Residential Communities
SPONSOR(S): Business & Professional Regulation Subcommittee; Civil Justice Subcommittee and Spano
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Cary	Bond
1) Business & Professional Regulation Subcommittee	11 Y, 2 N, As CS	Butler	Luczynski
2) Judiciary Committee		Cary dMC	Havlicak RH

SUMMARY ANALYSIS

Community Association Managers (CAMs) are licensed by the Department of Business and Professional Regulation to perform community association management functions on behalf of condominium, cooperative, and homeowners' associations. Duties include controlling or disbursing funds, preparing budgets and other financial documents, assisting in noticing or conducting meetings, and coordinating maintenance and other services.

The bill amends the CAM statute to list additional duties that CAMs may perform.

The bill also provides lien and release of lien forms for condominiums, cooperatives, and homeowners' associations for unpaid assessments.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Association Managers (CAMs) are licensed by the Department of Business and Professional Regulation (DBPR) to perform community association management functions.[1] The statutes define community association management as "practices requiring substantial specialized knowledge, judgment, and managerial skill. . . ."[2] Duties include controlling or disbursing funds, preparing budgets and other financial documents, assisting in noticing or conducting meetings, and coordinating maintenance and other services.[3]

CAMs are regulated by the seven-member Regulatory Council of Community Association Managers (Council). Five of the members must be licensed CAMs, one of whom may be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to 4-year terms by the Governor and confirmed by the Senate.[4]

Prospective CAMs must apply to DBPR to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend Department-approved in-person training prior to taking the exam.[5] CAMs are then required to complete continuing education hours as approved by the Council.[6]

The Florida Bar has a Standing Committee that focuses on the unlicensed practice of law. The Unlicensed Practice of Law Standing Committee (Standing Committee) held hearings in 1995 to determine if CAMs were crossing the line into the unlicensed practice of law in performing their statutory responsibilities. On certain matters, the Standing Committee determined that the CAMs were not performing legal work. Those activities included drafting meeting notices, writing board- and annual-meeting agendas, and filling out certain forms. However, the Standing Committee determined that several other duties commonly performed by CAMs did constitute the unlicensed practice of law, such as drafting lien forms and other certain forms, determining the timing and method of meeting notices, determining the votes necessary for certain actions, and advising a community association about laws or rules. The Standing Committee determined some other actions may or may not involve the unlicensed practice of law, depending on the circumstances.[7] The Standing Committee provided an advisory opinion to the Supreme Court for consideration. The Supreme Court adopted the Standing Committee's recommendations the following year.[8]

In May of 2013, the Standing Committee proposed a subsequent advisory opinion to clarify the Court's earlier opinion regarding CAMs. The proposed advisory opinion requested that the 1996 Court opinion remain in effect, but also requested that the Court consider other common practices by CAMs that were not fully addressed in the 1996 opinion. Specifically, the Standing Committee proposed advisory opinion suggests that the following should constitute the unlicensed practice of law:

- Drafting amendments to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

---

[1] Section 468.431(4), F.S.
[2] Section 468.431(2), F.S.
[3] *Id.*
[4] Section 468.4315(1), F.S.
[5] Section 468.433, F.S.
[6] Sections 468.4336 and 468.4337, F.S.
[7] *The Florida Bar re Advisory Opinion Activities of Cmty. Ass'n Managers*, 681 So.2d 1119, 1122 (Fla. 1996).
[8] *Id.* at 1124.

- Determining the number of days to be provided for statutory notice;
- Modifying limited proxy forms promulgated by the state if there is any discretion involved;
- Preparing documents concerning the right of the association to approve new prospective owners;
- Determining the votes needed to pass a proposition or amendment to recorded documents;
- Determining the number of owners' votes needed to establish a quorum;
- Preparing construction lien documents;
- Preparing, reviewing, drafting, and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;
- Determining who is the owner of a property that is to receive a statutory pre-lien letter; and
- Any activity that requires statutory or case law analysis to reach a legal conclusion.[9]

The Florida Supreme Court has not issued an opinion regarding the Standing Committee's proposed advisory opinion.[10]

Since 1950, through case law and advisory opinions, the Court has continued to define the boundaries of the unlicensed practice of law. There is no rule or test to determine whether an activity is considered to be the practice of law.[11] However, if an activity is within a profession's "sphere of activity," it is more likely that the Court will allow a non-lawyer to perform the activity, even if the activity involves drafting a legal instrument.[12] Furthermore, the less discretion that is involved, the more likely that a non-lawyer will be allowed to perform the activity, such as if there is a form so that the professional is merely filling in factual information such as names, addresses, figures, etc.[13]

Effect of the Bill

The bill amends s. 468.431(2), F.S., to add CAM responsibilities to the definition of Community Association Management:

- Determining the number of days required for statutory notices;
- Determining the amounts due the association;
- Collecting amounts due to the association before filing a civil action;
- Calculating the votes required for a quorum or to approve a proposition or amendment;
- Completing forms related to the management of a community association that have been created by statute or by a state agency;
- Drafting letters of intended action;
- Drafting meeting notices and agendas;
- Calculating and preparing certificates of assessment;
- Responding to requests for a certificate of assessment;
- Negotiating monetary or performance terms of a contract subject to approval by an association;

---

[9] The Florida Bar Standing Committee on the Unlicensed Practice of Law, FAO #2012-2, *Activities of Community Association Managers*, Proposed Advisory Opinion, May 15, 2013. (On file with the Civil Justice Subcommittee.)

[10] On March 26, 2014, this case was submitted to the Florida Supreme Court without oral argument. The latest procedural information regarding this case may be found under case number SC13-889 on the Florida Supreme Court's online docket at http://jweb.flcourts.org/pls/docket/ds_docket_search%20 (last viewed March 31, 2014).

[11] *See The Florida Bar re Advisory Opinion Activities of Cmty. Ass'n Managers*, 681 So. 2d 1119, 1123 (Fla. 1996) (stating that it is generally understood that "performance of services in representing another before the courts is the practice of law," and that " the giving of legal advice and counsel to others" is likely the unlicensed practice of law, even though "such matters may not then or ever be the subject of proceedings in a court").

[12] *See Keyes Co. v. Dade County Bar Ass'n*, 46 So.2d 605 (Fla. 1950) (delineating the "line of demarkation" between the sphere in which a real estate broker or agent operates and the sphere in which an attorney operates).

[13] *See, e.g., The Florida Bar re: Advisory Opinion – Nonlwayer Preparation of Residential Leases up to One Year in Duration*, 602 So.2d 914 (Fla. 1992); *The Florida Bar re Advisory Opinion – Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 627 So.2d 485 (Fla. 1993).

- Drafting prearbitration demands;
- Preparing statutory construction lien documents for association projects;
- Coordinating or performing maintenance for real or personal property and other routine services involved in the operation of a community association; and
- Complying with the association's governing documents and the requirements of law as necessary to perform such practices.

The bill amends ss. 718.116(5)(b), 719.108(4)(b), and 720.3085(1)(a), F.S., to provide a claim of lien form for a condominium, cooperative, and homeowners' association, respectively.

The bill amends ss. 718.116(5)(d), and 720.3085(1)(d), F.S., and adds s. 719.108(4)(d), F.S., to provide a release of lien form for a condominium, homeowners' association, and cooperative, respectively.

The bill amends s. 719.108(4) and (4)(b), F.S., to match the law of cooperatives with existing condominium and homeowners' association law with respect to a claim and execution of a lien.

B. SECTION DIRECTORY:

Section 1 amends s. 468.431, F.S., relating to definitions.

Section 2 amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.

Section 3 amends s. 719.108, F.S., relating to rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.

Section 4 amends s. 720.3085, F.S., relating to payment for assessments and lien claims.

Section 5 provides an effective date of July 1, 2014.

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 direct economic 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:

This 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

On March 4, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment that made several technical changes to the bill language for consistency in terminology and application, including clarifying that the amended forms shall be used in the provided format to be valid. The analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to residential communities; amending s. 468.431, F.S.; revising the term "community association management"; amending s. 718.116, F.S.; requiring a claim of lien on a condominium parcel to be in a specific form; requiring a release of lien to be in a specific form; amending s. 719.108, F.S.; deleting a provision providing for the expiration of certain liens; revising notice requirements; requiring a claim of lien on a cooperative parcel to be in a specific form; providing for the content of a recording notice; requiring a release of lien to be in a specific form; amending s. 720.3085, F.S.; requiring a claim of lien on a parcel within a homeowners' association to be in a specific form; requiring a release of lien to be in a specific form; providing an effective date.

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

Section 1. Subsection (2) of section 468.431, Florida Statutes, is amended to read:

468.431 Definitions.—As used in this part:

(2) "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and

when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting letters of intended action, drafting meeting notices and agendas, calculating and preparing certificates of assessment, responding to requests for certificates of assessment, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, preparing statutory construction lien documents for association projects, coordinating or performing maintenance for real or personal property and other routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices ~~and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association~~. A person who performs clerical or ministerial functions under the direct

supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Section 2. Subsection (5) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must be in substantially the following form:

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared ...(name)..., who was duly sworn and says that he/she is the authorized agent of the lienor, ...(name of association)..., whose address is ...(address)..., and that in accordance with the Condominium Act and the declaration of ...(name of condominium)..., a condominium, and the articles of incorporation and bylaws of the association, the association makes this claim of lien for ...(basis for claim of lien)..., for the following described real property:

UNIT NO. .... OF ...(NAME OF CONDOMINIUM)..., A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

upon which the association asserts this lien. The property is owned by ...(name of debtor)..., Debtor. There remains unpaid to

the association, the sum of $..... This lien secures these amounts, as well as any amounts and assessments and interest that may accrue in the future.

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

~~must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates.~~ It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and

that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

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

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the

association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

UNIT NO. .... OF (NAME OF CONDOMINIUM), A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,

INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

Section 3. Subsection (4) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount

due, and the due dates. ~~The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced.~~ Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail and:

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

~~(b)~~

A notice that is sent pursuant to this paragraph ~~subsection~~ is

deemed delivered upon mailing.

(b) A claim of lien must be in substantially the following form:

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared ...(name)... who was duly sworn and says that he/she is the authorized agent of the lienor, ...(name of association)..., whose address is ...(address)..., and that in accordance with the Cooperative Act and the cooperative documents of ...(name of cooperative)..., a cooperative, and the articles of incorporation and bylaws of the association, the association makes this claim of lien for ...(basis for claim of lien)..., for the following described real property:

UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID COOPERATIVE.

Upon which the association asserts this lien. The property is owned by ...(name of debtor)..., Debtor. There remains unpaid to the association, the sum of $..... This lien secures these amounts, as well as any amounts and assessments and interest that may accrue in the future.

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp Commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

The claim must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the

claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year).... Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the

notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) To be valid, a release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

UNIT NO. .... OF (NAME OF COOPERATIVE), A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL

APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID COOPERATIVE.

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

Section 4. Subsection (1) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record

on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must be in substantially the following form:

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared ...(name)... who was duly sworn and says that he/she is the authorized agent of the lienor, ...(name of association)..., whose address is ...(address)..., and that in accordance with the Florida Statutes and the homeowners' association documents of ...(name of association)..., a homeowners' association, and the articles of incorporation and bylaws of the association, the association makes this claim of lien for ...(basis for claim of lien)..., for the following described real property:

(PARCEL NO. .... OR LOT AND BLOCK) OF (NAME OF HOMEOWNERS' ASSOCIATION), A HOMEOWNERS' ASSOCIATION AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

(or insert appropriate metes and bounds description

here)

upon which the association asserts this lien. The property is owned by ...(name of debtor)..., Debtor. There remains unpaid to the association, the sum of $..... This lien secures these amounts, as well as any amounts and assessments and interest that may accrue in the future.

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

~~must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date.~~ The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney's fees incurred by the association incident to the collection process. The person making payment is

entitled to a satisfaction of the lien upon payment in full.

(b) By recording a notice in substantially the following form, a parcel owner or the parcel owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days following the date of service of this notice. Executed this .... day of ...., ...(year)....

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

After the notice of a contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or the most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay

resulting from the filing of a bankruptcy petition by the parcel owner or by any other person claiming an interest in the parcel.

(c) The association may bring an action in its name to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid assessments.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

(PARCEL NO. .... OR LOT AND BLOCK) OF ...(NAME OF HOMEOWNERS' ASSOCIATION)..., A HOMEOWNERS' ASSOCIATION AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART

THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

(or insert appropriate metes and bounds description here)

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

(e) ~~(d)~~ If the parcel owner remains in possession of the parcel after a foreclosure judgment has been entered, the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

(f) ~~(e)~~ The association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the

parcel.

Section 5. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee
Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) of section 468.431, Florida Statutes, is amended to read:

468.431 Definitions.—As used in this part:

(2) "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required

for statutory notices, determining amounts due to the association, collecting amounts due to the association before filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices ~~and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association~~. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Section 2. Section 468.4334, Florida Statutes, is created to read:

Section 2. Section 468.4334, Florida Statutes, is created to read:

468.4334 Duty of care; liability; indemnification.—

(1) The duty of care owed by a community association manager and a community association management firm to a community association is that level of care that a reasonably careful community association manager or firm would provide in like circumstances.

(2) A contract between a managed community association and a community association manager or a community association management firm may provide that the community association indemnifies and holds harmless the community association manager or community association management firm for ordinary negligence that results from the manager or management firm's act or omission that was the result of a lawful instruction of the directors or an officer of the community association. The provision for indemnification must be clear and conspicuous in the agreement. However, such indemnification may not cover, and the community association manager or a community association management firm may be held liable for, any act or omission that:

(a) Violates a criminal law as such is defined in s. 617.0834(1)(b)1.;

(b) Derives an improper personal benefit, either directly or indirectly;

(c) Is grossly negligent; or

(d) Is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 3. Subsections (3), (5), and (6) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, then to any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The foregoing is applicable

notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 718.303(4).

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during

which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, authorized administrative late fees, and all reasonable costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection process, including but not limited to, any reasonable costs for collection services contracted by the association. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

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

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

UNIT NO. .... OF (NAME OF CONDOMINIUM), A CONDOMINIUM

AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(signature of witness) (signature of authorized agent)
Print name: Print name:

(signature of witness)
Print name:

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

(6)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien

foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the _____ assessment to _____ Association. The Association intends to foreclose the lien and collect the unpaid amount within 30 days of this letter being provided to you.

You owe the interest accruing from (month/year) to the present. As of the date of this letter, the total amount due with interest is $ . . All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses and phone numbers of Association representative).

If this notice is not given at least 30 days before the

foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

Section 4. Subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States

mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

Re: Unit _____ of (name of association)

The following amounts are currently due on your account to _____ Association, and must be paid within thirty (30) days after your receipt of this letter. This letter shall serve as the Association's notice of intent to record a Claim of Lien against your property after thirty (30) days from your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due _____ (dates)	$ _____
Late fee, if applicable	$ _____
Interest through _____ *	$ _____

Certified mail charges $

Other costs $

TOTAL OUTSTANDING $

* interest accrues at the rate of $ per day.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to

any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, and then to the delinquent assessment. The foregoing applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, authorized administrative late fees and any reasonable costs for collection services contracted for by the association, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney ~~attorney's~~ fees incurred by the association and all reasonable collection costs incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. ~~The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced.~~ Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30

days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail and the notice must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

Re: Unit _____ of (name of cooperative)

The following amounts are currently due on your account to _____ Association, and must be paid within thirty (30) days after your receipt of this letter. This letter shall serve as the Association's notice of intent to record a Claim of Lien against your property after thirty (30) days from your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due _____ (dates)	$ _____
Late fee, if applicable	$ _____
Interest through _____ *	$ _____
Certified mail charges	$ _____
Other costs	$ _____
TOTAL OUTSTANDING	$ _____

* interest accrues at the rate of $ per day

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and

through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year).... Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the

notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF (NAME OF COOPERATIVE), A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

(signature of witness) (signature of authorized agent)
Print name: Print name:

(signature of witness)
Print name:

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement).... ...(Signature of Notary Public)... ...(Print, type, or stamp commissioned name of Notary Public)... Personally Known.... OR Produced.... as identification.

Section 6. Subsections (1), (3), (4), and (5) of section 720.3085, Florida Statutes, are amended to read:

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments

created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable collection costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection process. The person making payment is entitled to a satisfaction of the lien upon payment in full.

(b) By recording a notice in substantially the following form, a parcel owner or the parcel owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days following the date of service of this notice. Executed this .... day of ...., ...(year)....

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

After the notice of a contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or the most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the parcel owner or by any other person claiming an interest in the parcel.

(c) The association may bring an action in its name to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid assessments.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

(PARCEL NO. .... OR LOT AND BLOCK) OF _____ SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED AT PLAT BOOK _____, PAGE _____, OF THE OFFICIAL RECORDS OF _____ COUNTY, FLORIDA.

(or insert appropriate metes and bounds description here)

(signature of witness) (signature of authorized agent)

(signature of witness)

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....
...(Signature of Notary Public)...
...(Print, type, or stamp commissioned name of Notary Public)...
Personally Known.... OR Produced.... as identification.

(e) ~~(d)~~ If the parcel owner remains in possession of the parcel after a foreclosure judgment has been entered, the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

(f) ~~(e)~~ The association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the parcel.

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date. The association may also recover from the parcel owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment.

(b) Any payment received by an association and accepted

shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine.

(4) A homeowners' association may not file a record of lien against a parcel for unpaid assessments unless a written notice or demand for past due assessments as well as any other amounts owed to the association pursuant to its governing documents has been made by the association. The written notice or demand must:

(a) Provide the owner with 45 days following the date the notice is deposited in the mail to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand. The notice must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

Re: Parcel or (lot/block) _____ of (name of association)

The following amounts are currently due on your account to _____ Association, and must be paid within forty-five (45) days after your receipt of this letter. This letter shall serve as the Association's notice of intent to record a Claim of Lien against your property after forty-five (45) days from your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due _____ (dates)	$ _____
Late fee, if applicable	$ _____
Interest through _____ *	$ _____
Certified mail charges	$ _____
Other costs	$ _____
TOTAL OUTSTANDING	$ _____

* interest accrues at the rate of $ ____ per day.

(b) Be sent by registered or certified mail, return receipt requested, and by first-class United States mail to the parcel owner at his or her last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address. If the address reflected in the records is outside the United States, then sending the notice to that address and to the parcel

address by first-class United States mail is sufficient.

(5) The association may bring an action in its name to foreclose a lien for unpaid assessments secured by a lien in the same manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The action to foreclose the lien may not be brought until 45 days after the parcel owner has been provided notice of the association's intent to foreclose and collect the unpaid amount. The notice must be given in the manner provided in paragraph (4)(b), and the notice may not be provided until the passage of the 45 days required in paragraph (4)(a). The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the _____ assessment to _____ Association. The Association intends to foreclose the lien and collect the unpaid amount within 45 days of this letter being provided to you.

You owe the interest accruing from (month/year) to the present. As of the date of this letter, the total amount due with interest is $ . . All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses and phone numbers of Association representative).

(a) The association may recover any interest, late charges, costs, and reasonable attorney's fees incurred in a lien foreclosure action or in an action to recover a money judgment for the unpaid assessments.

(b) The time limitations in this subsection do not apply if the parcel is subject to a foreclosure action or forced sale of another party, or if an owner of the parcel is a debtor in a bankruptcy proceeding.

Section 7. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert: An act relating to residential communities; amending s. 468.431, F.S.; revising the term "community association management"; creating s. 468.4334, F.S.; providing that a community association manager is liable to the same extent as an officer or director; amending s. 718.116, F.S.; allowing for reasonable charges to be imposed for collection of a delinquent assessment;

requiring a release of lien to be in a specific form; requiring a pre-foreclosure notice to be in a specific form; amending s. 718.121, F.S.; requiring a pre-lien notice to be in a specific form; amending s. 719.108, F.S.; allowing for reasonable charges to be imposed for collection of a delinquent assessment; deleting a provision providing for the expiration of certain liens; revising notice requirements; requiring a pre-lien notice to be in a specific form; providing for the content of a recording notice; requiring a release of lien to be in a specific form; amending s. 720.3085, F.S.; requiring a release of lien to be in a specific form; allowing for reasonable charges to be imposed for collection of a delinquent assessment; requiring a pre-lien notice to be in a specific form; requiring a pre-foreclosure notice to be in a specific form; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 PCB CJS 14-04 Security of Confidential Personal Information
SPONSOR(S): Civil Justice Subcommittee; Metz
TIED BILLS: CS/HB 7087 **IDEN./SIM. BILLS:** CS/SB 1524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 1 N	Cary	Bond
1) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

Current law requires that a person who conducts business in Florida and maintains personal information in a computerized data system must disclose a breach in the security of the data to affected residents of Florida no later than 45 days following a determination that unencrypted personal information was acquired.

This bill repeals the current law and creates the Florida Information Protection Act of 2014 (Act). The Act requires notice of a breach be given to the Department of Legal Affairs (DLA) in addition to being given to affected residents. The act also shortens the time limit for notice to 30 days, allows delay of notifications if a law enforcement agency requests that notice be delayed for investigation purposes, and provides the DLA with enforcement authority to civilly prosecute a violator of the terms of the Act under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The Act provides for penalties in addition to FDUTPA of $1000 for each day, up to 30 days, that the required notice of the breach is not given, and a penalty of $50,000 for each 30-day period thereafter that notice is not given, for up to 180 days, with an overall cap of $500,000.

The bill also requires covered entities to take all reasonable measures to dispose of personal information.

State government entities also must report a breach to the DLA, but are not liable for civil penalties and are not required to properly dispose of personal information by this bill. Counties and municipalities are exempt from the Act.

The fiscal impacts of this bill on state government and the private sector are unknown. The bill does not appear to have a fiscal impact on local government revenues or expenditures.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law requires that a person who conducts business in Florida and maintains personal information in a computerized data system must disclose a breach in the security of the data to any resident of this state subject to certain exceptions. When a disclosure is required, it must be made without unreasonable delay, and no later than 45 days following the determination that unencrypted personal information was acquired, or reasonably believed to have been acquired, by an unauthorized person and the acquired information materially compromises the security, confidentiality, or integrity of personal information.[1]

Current law provides that any person who fails to make the required disclosure within forty-five days is liable for an administrative fine in the amount of $1,000 for each day the breach goes undisclosed for up to 30 days. The person is liable for up to $50,000 for each 30 day period the breach goes undisclosed up to 180 days.[2] If disclosure is not made within 180 days, the person is subject to an administrative fine of up to $500,000.[3]

The disclosure required must be made by all persons in the state in possession of computerized data, but the administrative sanctions described above do not apply in the case of computerized information in the custody of any governmental agency or subdivision. However, if the governmental agency or subdivision has entered into a contract with a contractor of third party administrator to provide governmental services, the contractor or third party administrator is a person to whom the administrative sanctions would apply. Nevertheless, that contractor or third party administrator found in violation of the non-disclosure restrictions does not have an action for contribution or set-off available against the employing agency or subdivision.[4]

Further, current law provides that any person who, on behalf of another business entity, maintains computerized data that includes personal information, must notify the business entity for whom the information is maintained of any breach of the security of the data within 10 days of the determination that a breach has occurred. This notification requirement applies if the personal information is reasonably believed to have been acquired by an unauthorized person. The administrative fines described above apply to a person who fails to disclose a security breach under this provision.

Finally, current law provides that in the event that notification is required of more than 1,000 persons at one time, the person must also notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution and content of the notices.[5]

Effect of Proposed Changes

The bill repeals current law regarding data breaches at s. 817.5681, F.S., and creates s. 501.171, F.S., known as the "Florida Information Protection Act of 2014" (Act).

The bill creates s. 501.171(1), F.S., to provide definitions. The bill defines the terms "breach," "breach of the security of the system," "personal information," "unauthorized person," and "person." The bill specifies what type of notice must be provided.

---

[1] Section 817.5681(1)(a), F.S.
[2] Section 817.5681(1)(b)1., F.S.
[3] Section 817.5681(1)(b)2., F.S.
[4] Section 817.5681(1)(d), F.S.
[5] Section 817.5681(12), F.S.

The bill creates s. 501.171(2), F.S., to require a "covered entity" to provide notice of any breach of security once it is discovered. A covered entity is defined as a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information, including a governmental entity.[6] A breach of security is an unauthorized access of data in electronic form containing personal information. Personal information includes either a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account, or an individual's first initial or name and last name in combination with any one or more of the following:

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
- Any other information from or about an individual that could be used to personally identify that person.

The bill creates s. 501.171(3), F.S., to require that a covered entity provide notice to the Department of Legal Affairs (DLA) of any breach in security within 30 days after the determination of the breach or a reason to believe a breach had occurred. Written notice to the DLA must include:

- A synopsis of the events surrounding the breach;
- A police report, incident report, or computer forensics report;
- The number of individuals in this state who were or potentially have been affected by the breach;
- A copy of the policies in place regarding breaches;
- Any steps that have been taken to rectify the breach;
- Any services being offered by the covered entity to individuals, without charge, and how to use such services;
- A copy of the notice sent to the individuals affected;
- The name, address, telephone number, and e-mail address of an employee of the covered entity from whom additional information may be obtained about the breach and the steps taken to rectify the breach and prevent similar breaches; and
- Whether notice to individuals is being made pursuant to federal law or pursuant to the requirements of the Act.

If the covered entity is the judicial branch, the Executive Office of the Governor, the Department of Financial Services, or the Department of Agriculture and Consumer Services, the agency may post the information on their agency-maintained websites rather than providing written notice to the DLA.

The bill creates s. 501.171(4), F.S., to require that a covered entity, or a third-party agent of a covered entity, to provide notice to each individual in Florida whose personal information was accessed, or was reasonably believed to have been accessed, by a breach. Notification to affected individuals must be made as expeditiously as practicable and without unreasonable delay, but no later than 30 days after the determination of a breach unless:

[6] A governmental entity is not subject to the enforcement provisions of the Act or the requirements for disposal of individual records. Furthermore, counties and municipalities are not "governmental entities" for the purposes of the Act.

- If a federal or state law enforcement agency determines that notice to individuals would interfere with a criminal investigation, in which case the notice will be delayed for any period that the law enforcement agency determines is reasonably necessary; or
- After an appropriate investigation and written consultation with relevant federal and state law enforcement agencies, the covered entity reasonably determines that the breach has not and likely will not result in identity theft or any other financial harm to the individuals. Such a determination must be documented in writing and maintained for at least 5 years, and must be provided to the DLA within 30 days of such a determination.

The notice to an affected individual must be made by either written notice sent to the individual's mailing address or an e-mail sent to the individual's e-mail address and must include:

- The date, estimated date, or estimated date range of the breach of security;
- A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and
- Information that the individual can use to contact the covered entity to inquire about the breach and the personal information that the covered entity maintained about the individual.

If the cost of such notification would exceed $250,000, or if there are more than 500,000 affected individuals, or if the covered entity does not have an e-mail address or mailing address for the affected individuals, the covered entity may provide substitute notification. The substitute notification must include a conspicuous notice on the Internet website of the covered entity if the covered entity maintains a website, and notification in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.

If a covered entity is in compliance with a federal law that requires the covered entity to provide notification to individuals following a breach of security, the covered entity is deemed to comply with these requirements if it has notified the DLA.

The bill creates s. 501.171(5), F.S., to require a covered entity to notify consumer credit reporting agencies if the covered entity must provide notification to more than 1,000 individuals at a single time.

The bill creates s. 501.171(6), F.S., to require a third-party agent to notify the covered entity in the event of a breach of a security system maintained by a third-party agent. The covered entity is then responsible for the notice as if the breach had been to the covered entity's own system.

The bill creates s. 501.171(7), F.S., to require the DLA to provide an annual report, by February 1, to the President of the Senate and the Speaker of the House describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding year along with recommendations for security improvements.

The bill creates s. 501.171(8), F.S., to require each covered entity or third-party agent to take all reasonable measures to dispose, or arrange for the disposal, of personal information within its custody or control when the records are no longer retained. Such disposal must involve shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means. This provision does not apply to governmental entities.

The bill creates s. 501.171(9), F.S., to provide the DLA with a means to enforce the Act. Specifically, if a covered entity violates any requirement of the Act, it will be treated as an unfair or deceptive trade practice[7] in any action brought by the DLA. An unfair or deceptive trade practice is punishable by a civil

[7] Section 501.207, F.S., allows the DLA to bring (1) an action to obtain a declaratory judgment that an act or practice violates the Florida Deceptive and Unfair Trade Practices Act (FDUTPA); (2) an action to enjoin any person who has

penalty of not more than $10,000 for each violation.[8] A civil penalty is "strictly construed and is not to be extended by construction."[9] Therefore, a single breach event would likely be considered a single violation under FDUTPA.[10] However, the Act provides additional penalties beyond a typical unfair or deceptive trade practice claim. In addition to the $10,000 per violation penalty under FDUTPA, the Act provides for a civil penalty of $1,000 for each day the breach goes undisclosed for up to 30 days and, thereafter, $50,000 for each 30-day period or portion thereof for up to 180 days. If notification is not made within 180 days, the total penalty may not exceed $500,000. All penalties will be deposited into the General Revenue Fund.

The bill creates s. 501.171(10), F.S., to provide that the bill does not create a private cause of action.

The bill amends ss. 282.0041 and 282.318, F.S., to update cross references in accordance with the Act.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 provides a name for the Act.

Section 2 repeals s. 817.5681, F.S., relating to breach of security concerning confidential personal information in third-party possession and administrative penalties.

Section 3 creates s. 501.171, F.S., relating to security of confidential personal information.

Section 4 amends s. 282.0041, F.S., relating to definitions.

Section 5 amends s. 282.318, F.S., relating to enterprise security of data and information technology.

Section 6 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an unknown, positive impact on state revenues to the extent that the DLA enforces and collects civil penalties against violators of the Act.

2. Expenditures:

   The bill appears to create an unknown increase in state government expenditures for the DLA. However, the DLA indicates that any additional duties required of consumer protection staff can be absorbed within existing appropriations for the next fiscal year.[11]

---

violated, is violating, or is likely to violate FDUTPA; and/or (3) an action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.

[8] Section 501.2075, F.S.

[9] *3B TV, Inc. v. State, Office of Atty. Gen.*, 794 So.2d 744, 749 (Fla. 1st DCA 2001).

[10] *See id. See also* s. 501.171(9)(b) of the bill, which provides that a civil penalty must be applied per breach, and not per individual affected.

[11] *See* Department of Legal Affairs bill analysis for HB 7085 (on file with Judiciary Committee staff.)

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 creates a requirement to notify affected individuals of a breach. Because the reporting requirement is similar to that in current law, this requirement is not anticipated to have a fiscal impact on the private sector.

The bill creates a requirement to notify the state in the event of a breach. The requirement is new, but is expected to have a minimal impact on the private sector.

The bill contains civil penalties that may be assessed against individuals and entities in the private sector. The penalty can be as high as $500,000 for violations of the Act. It is unknown how often these penalties would be assessed and their impact on the private sector is thus unknown.

The bill mandates that businesses properly dispose of individual records. The fiscal impact of this requirement on the private sector is unknown. Many companies are already required by current state and federal law to take reasonable measures to properly dispose of certain personal information, and thus will not be impacted by this requirement in the bill. For example, the Fair Credit Reporting Act and the Federal Trade Commission require that businesses properly dispose of consumer information, and the Health Insurance Portability and Accountability Act and the Gramm-Leach-Bliley Act require health care providers properly dispose of certain health information.

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

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment to the PCB and reported the bill favorably. The amendment provides a slightly revised structure and technical and stylistic changes throughout.

A bill to be entitled

An act relating to security of confidential personal information; providing a short title; repealing s. 817.5681, F.S., relating to a breach of security concerning confidential personal information in third-party possession; creating s. 501.171, F.S.; providing definitions; requiring specified entities to take reasonable measures to protect and secure data containing personal information in electronic form; requiring specified entities to notify the Department of Legal Affairs of data security breaches; requiring notice to individuals of data security breaches in certain circumstances; providing exceptions to notice requirements in certain circumstances; specifying contents of notice; requiring notice to credit reporting agencies in certain circumstances; requiring the department to report annually to the Legislature; specifying report requirements; providing requirements for disposal of customer records; providing for enforcement actions by the department; providing civil penalties; specifying that no private cause of action is created; amending ss. 282.0041 and 282.318, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the "Florida Information Protection Act of 2014."

Section 2. Section 817.5681, Florida Statutes, is repealed.

Section 3. Section 501.171, Florida Statutes, is created to read:

501.171 Security of confidential personal information.—

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

(a) "Breach of security" or "breach" means unauthorized access of data in electronic form containing personal information.

(b) "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For purposes of the notice requirements of subsections (3)-(6), the term includes a governmental entity.

(c) "Customer records" means any material, regardless of the physical form, on which personal information is recorded or preserved by any means, including, but not limited to, written or spoken words, graphically depicted, printed, or electromagnetically transmitted that are provided by an individual in this state to a covered entity for the purpose of purchasing or leasing a product or obtaining a service.

(d) "Data in electronic form" means any data stored

electronically or digitally on any computer system or other database and includes recordable tapes and other mass storage devices.

(e) "Department" means the Department of Legal Affairs.

(f) "Governmental entity" means any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of this state that acquires, maintains, stores, or uses data in electronic form containing personal information.

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:

(I) A social security number.

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity.

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account.

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

(VI) Any other information from or about an individual that could be used to personally identify that person; or

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

2. The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity or information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.

(h) "Third-party agent" means an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity.

(2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity, governmental entity, or third-party agent shall take reasonable measures to protect and secure data in electronic form containing personal information and prevent a breach of security.

(3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—

(a) A covered entity shall give notice to the department of any breach of security following discovery by the covered entity. Notice to the department must be made within 30 days

after the determination of the breach or reason to believe a breach had occurred.

(b) The written notice to the department must include:

1. A synopsis of the events surrounding the breach.

2. A police report, incident report, or computer forensics report.

3. The number of individuals in this state who were or potentially have been affected by the breach.

4. A copy of the policies in place regarding breaches.

5. Any steps that have been taken to rectify the breach.

6. Any services being offered by the covered entity to individuals, without charge, and instructions as to how to use such services.

7. A copy of the notice sent to the individuals.

8. The name, address, telephone number, and e-mail address of the employee of the covered entity from whom additional information may be obtained about the breach and the steps taken to rectify the breach and prevent similar breaches.

9. Whether notice to individuals is being made pursuant to federal law or pursuant to the requirements of subsection (4).

(c) For a covered entity that is the judicial branch, the Executive Office of the Governor, the Department of Financial Services, and the Department of Agriculture and Consumer Services, in lieu of providing the written notice to the department, the covered entity may post the information described in subparagraphs (b)1.-7. on an agency-managed

website.

(4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—

(a) A covered entity shall give notice to each individual in this state whose personal information was, or the covered entity reasonably believes to have been, accessed as a result of the breach. Notice to individuals shall be made as expeditiously as practicable and without unreasonable delay, taking into account the time necessary to allow the covered entity to determine the scope of the breach of security, to identify individuals affected by the breach, and to restore the reasonable integrity of the data system that was breached, but no later than 30 days after the determination of a breach unless subject to a delay authorized under paragraph (b) or waiver under paragraph (c).

(b) If a federal or state law enforcement agency determines that notice to individuals required under this subsection would interfere with a criminal investigation, the notice shall be delayed upon the written request of the law enforcement agency for any period that the law enforcement agency determines is reasonably necessary. A law enforcement agency may, by a subsequent written request, revoke such delay or extend the period set forth in the original request made under this paragraph by a subsequent request if further delay is necessary.

(c) Notwithstanding paragraph (a), notice to the affected individuals is not required if, after an appropriate

investigation and written consultation with relevant federal and state law enforcement agencies, the covered entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm to the individuals whose personal information has been accessed. Such a determination must be documented in writing and maintained for at least 5 years. The covered entity shall provide the written determination to the department within 30 days after the determination.

(d) The notice to an affected individual shall be by one of the following methods:

1. Written notice sent to the mailing address of the individual in the records of the covered entity; or

2. E-mail notice sent to the e-mail address of the individual in the records of the covered entity.

(e) The notice to an individual with respect to a breach of security shall include, at a minimum:

1. The date, estimated date, or estimated date range of the breach of security.

2. A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security.

3. Information that the individual can use to contact the covered entity to inquire about the breach of security and the personal information that the covered entity maintained about the individual.

(f) A covered entity required to provide notice to an individual may provide substitute notice in lieu of direct notice if such direct notice is not feasible because the cost of providing notice would exceed $250,000, the affected individuals exceed 500,000 persons, or the covered entity does not have an e-mail address or mailing address for the affected individuals. Such substitute notice shall include the following:

1. A conspicuous notice on the Internet website of the covered entity, if such covered entity maintains a website; and

2. Notice in print and to broadcast media, including major media in urban and rural areas where the affected individuals reside.

(g) A covered entity that is in compliance with any federal law that requires such covered entity to provide notice to individuals following a breach of security is deemed to comply with the notice requirements of this subsection if the covered entity has promptly provided the notice to the department under subsection (3).

(5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered entity discovers circumstances requiring notice pursuant to this section of more than 1,000 individuals at a single time, the covered entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing, distribution, and content of the notices.

(6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY AGENTS.—In the event of a breach of security of a system maintained by a third-party agent, such third-party agent shall promptly notify the covered entity of the breach of security. Upon receiving notice from a third-party agent, a covered entity shall provide notices required under subsections (3) and (4). A third-party agent shall provide a covered entity with all information that the covered entity needs to comply with its notice requirements.

(7) ANNUAL REPORT.—By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding calendar year along with recommendations for security improvements. The report shall identify any governmental entity that has violated any of the applicable requirements in subsections (2)-(6) in the preceding calendar year.

(8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each covered entity or third-party agent shall take all reasonable measures to dispose, or arrange for the disposal, of customer records containing personal information within its custody or control when the records are no longer to be retained. Such disposal shall involve shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

(9) ENFORCEMENT.—

(a) A violation of this section shall be treated as an unfair or deceptive trade practice in any action brought by the department under s. 501.207 against a covered entity or third-party agent.

(b) In addition to the remedies provided for in paragraph (a), a covered entity that violates subsection (3) or subsection (4) shall be liable for a civil penalty not to exceed $500,000, as follows:

1. In the amount of $1,000 for each day the breach goes undisclosed for up to 30 days and, thereafter, $50,000 for each 30-day period or portion thereof for up to 180 days.

2. If notice is not made within 180 days, in an amount not to exceed $500,000.

The civil penalties for failure to notify provided in this paragraph shall apply per breach and not per individual affected by the breach.

(c) All penalties collected pursuant to this subsection shall be deposited into the General Revenue Fund.

(10) NO PRIVATE CAUSE OF ACTION.—This section does not establish a private cause of action.

Section 4. Subsection (5) of section 282.0041, Florida Statutes, is amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(5) "Breach" has the same meaning as the term "breach of

security" as provided in s. 501.171 ~~in s. 817.5681(4)~~.

Section 5. Paragraph (i) of subsection (4) of section 282.318, Florida Statutes, is amended to read:

282.318 Enterprise security of data and information technology.—

(4) To assist the Agency for Enterprise Information Technology in carrying out its responsibilities, each agency head shall, at a minimum:

(i) Develop a process for detecting, reporting, and responding to suspected or confirmed security incidents, including suspected or confirmed breaches consistent with the security rules and guidelines established by the Agency for Enterprise Information Technology.

1. Suspected or confirmed information security incidents and breaches must be immediately reported to the Agency for Enterprise Information Technology.

2. For incidents involving breaches, agencies shall provide notice in accordance with s. 501.171 ~~s. 817.5681~~ and to the Agency for Enterprise Information Technology in accordance with this subsection.

Section 6. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Metz offered the following:

Amendment

Remove lines 36-246 and insert:

(a) "Breach of security" or "breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

(b) "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For purposes of

the notice requirements in subsections (3)-(6), the term includes a governmental entity.

(c) "Customer records" means any material, regardless of the physical form, on which personal information is recorded or preserved by any means, including, but not limited to, written or spoken words, graphically depicted, printed, or electromagnetically transmitted that are provided by an individual in this state to a covered entity for the purpose of purchasing or leasing a product or obtaining a service.

(d) "Data in electronic form" means any data stored electronically or digitally on any computer system or other database and includes recordable tapes and other mass storage devices.

(e) "Department" means the Department of Legal Affairs.

(f) "Governmental entity" means any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of this state that acquires, maintains, stores, or uses data in electronic form containing personal information.

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:

(I) A social security number.

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity.

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account.

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

2. The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.

(h) "Third-party agent" means an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity.

(2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity, governmental entity, or third-party agent shall take reasonable measures to protect and secure data in electronic form containing personal information.

(3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—

(a) A covered entity shall provide notice to the department of any breach of security affecting 500 or more individuals in this state. Such notice must be provided to the department as expeditiously as practicable, but no later than 30 days after the determination of the breach or reason to believe a breach occurred. A covered entity may receive 15 additional days to provide notice as required in subsection (4) if good cause for delay is provided in writing to the department within 30 days after determination of the breach or reason to believe a breach occurred.

(b) The written notice to the department must include:

1. A synopsis of the events surrounding the breach at the time notice is provided.

2. The number of individuals in this state who were or potentially have been affected by the breach.

3. Any services related to the breach being offered or scheduled to be offered, without charge, by the covered entity to individuals, and instructions as to how to use such services.

4. A copy of the notice required under subsection (4) or an explanation of the other actions taken pursuant to subsection (4).

5. The name, address, telephone number, and e-mail address of the employee or agent of the covered entity from whom additional information may be obtained about the breach.

(c) The covered entity must provide the following information to the department upon its request:

1. A police report, incident report, or computer forensics report.

2. A copy of the policies in place regarding breaches.

3. Steps that have been taken to rectify the breach.

(d) A covered entity may provide the department with supplemental information regarding a breach at any time.

(e) For a covered entity that is the judicial branch, the Executive Office of the Governor, the Department of Financial Services, or the Department of Agriculture and Consumer Services, in lieu of providing the written notice to the department, the covered entity may post the information described in subparagraphs (b)1.-4. on an agency-managed website.

(4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—

(a) A covered entity shall give notice to each individual in this state whose personal information was, or the covered entity reasonably believes to have been, accessed as a result of the breach. Notice to individuals shall be made as expeditiously

as practicable and without unreasonable delay, taking into account the time necessary to allow the covered entity to determine the scope of the breach of security, to identify individuals affected by the breach, and to restore the reasonable integrity of the data system that was breached, but no later than 30 days after the determination of a breach or reason to believe a breach occurred unless subject to a delay authorized under paragraph (b) or waiver under paragraph (c).

(b) If a federal, state, or local law enforcement agency determines that notice to individuals required under this subsection would interfere with a criminal investigation, the notice shall be delayed upon the written request of the law enforcement agency for a specified period that the law enforcement agency determines is reasonably necessary. A law enforcement agency may, by a subsequent written request, revoke such delay as of a specified date or extend the period set forth in the original request made under this paragraph to a specified date if further delay is necessary.

(c) Notwithstanding paragraph (a), notice to the affected individuals is not required if, after an appropriate investigation and consultation with relevant federal, state, or local law enforcement agencies, the covered entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm to the individuals whose personal information has been accessed. Such a determination must be documented in writing and maintained for

at least 5 years. The covered entity shall provide the written determination to the department within 30 days after the determination.

(d) The notice to an affected individual shall be by one of the following methods:

1. Written notice sent to the mailing address of the individual in the records of the covered entity; or

2. E-mail notice sent to the e-mail address of the individual in the records of the covered entity.

(e) The notice to an individual with respect to a breach of security shall include, at a minimum:

1. The date, estimated date, or estimated date range of the breach of security.

2. A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security.

3. Information that the individual can use to contact the covered entity to inquire about the breach of security and the personal information that the covered entity maintained about the individual.

(f) A covered entity required to provide notice to an individual may provide substitute notice in lieu of direct notice if such direct notice is not feasible because the cost of providing notice would exceed $250,000, because the affected individuals exceed 500,000 persons, or because the covered entity does not have an e-mail address or mailing address for

the affected individuals. Such substitute notice shall include the following:

1. A conspicuous notice on the Internet website of the covered entity if the covered entity maintains a website; and

2. Notice in print and to broadcast media, including major media in urban and rural areas where the affected individuals reside.

(g) Notice provided pursuant to rules, regulations, procedures, or guidelines established by the covered entity's primary or functional federal regulator is deemed to be in compliance with the notice requirement in this subsection if the covered entity notifies affected individuals in accordance with the rules, regulations, procedures, or guidelines established by the primary or functional federal regulator in the event of a breach of security. Under this paragraph, a covered entity that timely provides a copy of such notice to the department is deemed to be in compliance with the notice requirement in subsection (3).

(5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered entity discovers circumstances requiring notice pursuant to this section of more than 1,000 individuals at a single time, the covered entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing, distribution, and content of the notices.

(6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY AGENTS; NOTICE BY AGENTS.—

(a) In the event of a breach of security of a system maintained by a third-party agent, such third-party agent shall notify the covered entity of the breach of security as expeditiously as practicable, but no later than 10 days following the determination of the breach of security or reason to believe the breach occurred. Upon receiving notice from a third-party agent, a covered entity shall provide notices required under subsections (3) and (4). A third-party agent shall provide a covered entity with all information that the covered entity needs to comply with its notice requirements.

(b) An agent may provide notice as required under subsections (3) and (4) on behalf of the covered entity; however, an agent's failure to provide proper notice shall be deemed a violation of this section against the covered entity.

(7) ANNUAL REPORT.—By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding calendar year along with recommendations for security improvements. The report shall identify any governmental entity that has violated any of the applicable requirements in subsections (2)-(6) in the preceding calendar year.

(8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each covered entity or third-party agent shall take all reasonable measures to dispose, or arrange for the disposal, of customer records containing personal information within its custody or control when the records are no longer to be retained. Such disposal shall involve shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

(9) ENFORCEMENT.—

(a) A violation of this section shall be treated as an unfair or deceptive trade practice in any action brought by the department under s. 501.207 against a covered entity or third-party agent.

(b) In addition to the remedies provided for in paragraph (a), a covered entity that violates subsection (3) or subsection (4) shall be liable for a civil penalty not to exceed $500,000, as follows:

1. In the amount of $1,000 for each day up to the first 30 days following any violation of subsection (3) or subsection (4) and, thereafter, $50,000 for each subsequent 30-day period or portion thereof for up to 180 days.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7087 PCB CJS 14-05 Pub. Rec./Notices of Data Breach and Investigations/DLA
SPONSOR(S): Government Operations Subcommittee; Civil Justice Subcommittee; Metz
TIED BILLS: HB 7085 **IDEN./SIM. BILLS:** SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	11 Y, 0 N	Cary	Bond
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Williamson	Williamson
2) Judiciary Committee		Cary JML	Havlicak RH

SUMMARY ANALYSIS

House Bill 7085 creates the Florida Information Protection Act of 2014 (Act). It requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach.

The bill, which is linked to passage of House Bill 7085, creates a public record exemption relating to the Act. All information received by the DLA pursuant to a notice of a security breach, or received pursuant to an investigation by the DLA or another law enforcement agency, is confidential and exempt from public record requirements. The exemption applies until the investigation is completed or ceases to be active.

The bill authorizes the DLA to disclose the confidential and exempt information in certain instances.

Upon completion of an investigation or once an investigation ceases to be active, the following information remains confidential and exempt from public record requirements:

- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary business information.

The bill defines "proprietary business information." It provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain information related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. An exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.[2] If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.[3] Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.[4] However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.[5]

House Bill 7085 (2014), Florida Information Protection Act of 2014

House Bill 7085 creates the Florida Information Protection Act of 2014 (Act). It requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach. A breach of security is an unauthorized access of data in electronic form containing personal information. Personal information includes either a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account, or an individual's first initial or name and last name in combination with any one or more of the following:

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

---

[1] Art I., s. 24(c), Fla.Const.
[2] *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).
[3] *Id.*
[4] *Id.*
[5] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; and
- Any other information from or about an individual that could be used to personally identify that person.

The Act also requires the DLA to provide an annual report, by February 1, to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding year, along with recommendations for security improvements.

Effect of Proposed Changes

The bill, which is linked to passage of House Bill 7085, creates s. 501.171(11), F.S., to provide a public record exemption relating to the Act. All information received by the DLA pursuant to a notification of a security breach, or received pursuant to an investigation by the DLA or another law enforcement agency, is confidential and exempt from public record requirements until such time as the investigation is completed or ceases to be active.

During an active investigation, the DLA may disclose confidential and exempt information:
- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the DLA determines that such release would assist in notifying the public or locating or identifying a person the DLA believes to have been a victim of the breach or improper disposal of customer records; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

Upon conclusion of an investigation or once an investigation ceases to be active, the following information remains confidential and exempt from public record requirements:
- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary business information.

The bill defines "proprietary business information" to mean information that:
- Is owned or controlled by the covered entity.
- Is intended to be private and is treated by the covered entity as private because disclosure would harm the covered entity or its business operations.
- Has not been disclosed except as required by law or by a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the DLA.
- Includes:
  - Trade secrets as defined in the Uniform Trade Secrets Act.[6]
  - Competitive interests, the disclosure of which would impair the competitive business of the covered entity who is the subject of the information.

[6] *See* s. 688.002(4), F.S.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 501.171, F.S., as created by House Bill 7085, to create a public record exemption.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

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 direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs (DLA). Staff responsible for complying with public record requests could require training related to the creation of the public record exemption, and the DLA may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DLA.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Civil Justice Subcommittee
On February 19, 2014, the Civil Justice Subcommittee adopted one amendment to the PCB and reported the bill favorably. The amendment provides that information received by the DLA is confidential and exempt from a public record request during an active investigation and that certain sensitive personal and business information remains confidential and exempt after the investigation is complete.

Government Operations Subcommittee
On March 25, 2014, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Maintained the public record exemption for information provided to the DLA pursuant to a notice or investigation of a data breach.
- Restructured the exemption and made it clear the DLA is the custodian of the confidential and exempt information.
- Included a definition of proprietary business information.
- Provided for future repeal of the exemption pursuant to the Open Government Sunset Review Act.
- Modified the public necessity statement so that it conformed to the public record exemption.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 501.171, F.S.; providing an exemption from public records requirements for information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations; authorizing disclosure under certain circumstances; defining the term "proprietary business information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (11) is added to section 501.171, Florida Statutes, as created by HB 7085, 2014 Regular Session, to read:

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification required by this section, or received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s.

119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper disposal of customer records; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a covered entity's data security.

5. Information that would disclose a covered entity's proprietary business information.

(d) For purposes of this subsection, the term "proprietary business information" means information that:

1. Is owned or controlled by the covered entity.

2. Is intended to be private and is treated by the covered entity as private because disclosure would harm the covered entity or its business operations.

3. Has not been disclosed except as required by law or by a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the covered entity who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.171, Florida Statutes, or received by the department pursuant to an investigation by the department or a law

enforcement agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.171, Florida Statutes, is likely to result in an investigation of such violation because a data breach is likely the result of criminal activity that may lead to further criminal activity. The premature release of such information could frustrate or thwart the investigation and impair the ability of the Department of Legal Affairs to effectively and efficiently administer s. 501.171, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs would undermine the specific statutory exemption protecting that information.

(3) An investigation of a data breach or improper disposal of customer records is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial and health information. Such information could be used for the purpose of identity theft. In addition, release of such

information could subject possible victims of the data breach or improper disposal of customer records to further financial harm. Furthermore, matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors.

(4) Release of a computer forensic report or other information that would otherwise reveal weaknesses in a covered entity's data security could compromise the future security of that entity, or other entities, if such information were available upon conclusion of an investigation or once an investigation ceased to be active. The release of such report or information could compromise the security of current entities and make those entities susceptible to future data breaches. Release of such report or information could result in the identification of vulnerabilities and further breaches of that system.

(5) Notices received by the Department of Legal Affairs and information received during an investigation of a data breach are likely to contain proprietary business information, including trade secrets, about the security of the breached system. The release of the proprietary business information could result in the identification of vulnerabilities and further breaches of that system. In addition, a trade secret derives independent, economic value, actual or potential, from

being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary business information, including a trade secret, through a public records request could destroy the value of the proprietary business information and cause a financial loss to the covered entity submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary business information in the marketplace.

Section 3. This act shall take effect on the same date that HB 7085 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 7087 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Metz offered the following:

Amendment

Remove line 37 and insert:

customer records; however; information made confidential and exempt pursuant to paragraph (c) shall not be released pursuant to this sub-paragraph; or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7161 PCB CJS 14-06 Arbitration
SPONSOR(S): Civil Justice Subcommittee and Passidomo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	11 Y, 0 N, As CS	Cary	Bond
1) Judiciary Committee		Cary JML	Havlicak RH

SUMMARY ANALYSIS

In 2013, the Legislature passed the Revised Florida Arbitration Code (Code). Parties may generally adopt procedures in an arbitration agreement, however, certain provisions of the Code may not be waived. The provisions that may not be waived are generally procedural requirements that are fundamental to the fairness of arbitration. A provision that may not be waived in the current statute refers to the "remedies provided under s. 682.12," F.S. This appears to be a scrivener's error, as remedies are in s. 682.11, F.S., while 682.12, F.S., relates to the right to confirm an award. This bill amends s. 682.014(3)(f), F.S., to correct the scrivener's error by replacing "remedies" with the "right to confirmation of an award." The bill applies retroactively to the effective date of the Revised Florida Arbitration Code, July 1, 2013.

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

The bill has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2013, the Legislature passed, and the Governor signed, the Revised Florida Arbitration Code.[1] The Revised Arbitration Code was based on the 2000 model act and was the first major upgrade to Florida's Arbitration Code since 1957.

Arbitration is a form of alternative dispute resolution, where an arbitrator, or a panel of arbitrators, hears a case instead of a court.[2] Generally, the agreement provides for terms of the arbitration, but the Arbitration Code provides some default rules where the agreement is silent.[3] An arbitration clause is often included in contracts, and it is a well-established principle that arbitration is generally favored by the courts where agreed to by the parties.[4] It is the public policy of both the federal[5] and state[6] governments to favor arbitration.

Arbitration generally occurs independent of the court system, however certain aspects of arbitration may require court action. For example, a party may need to go to court to compel or stay an arbitration proceeding.[7] Also, after a decision is made in an arbitration to provide an award to a party to the arbitration, the award may be confirmed by the court to provide a legal effect.[8]

Effect of the Bill

Parties may generally adopt rules and procedures by contract because the procedures contained in the Revised Arbitration Code serves as a gap filler. However, certain provisions may not be waived. The provisions that may not be waived are generally procedural requirements that would fundamentally undermine the arbitration agreement. One such provision in the current statute refers to the "remedies provided under s. 682.12," F.S.[9] This appears to be a scrivener's error, as remedies are in s. 682.11, F.S., while 682.12, F.S., relates to the right to confirm an award. This bill amends s. 682.014(3)(f), F.S., to correct the scrivener's error by replacing "remedies" with the "right to confirmation of an award." This correction appears to be consistent with the apparent intent of the 2013 legislation and is remedial in nature.

The bill applies retroactively to July 1, 2013, which was the date that the Revised Florida Arbitration Code became a law.

B. SECTION DIRECTORY:

Section 1 amends s. 682.014, F.S., relating to effect of an agreement to arbitrate and nonwaivable provisions.

---

[1] Chapter 2013-232, L.O.F.
[2] Black's Law Dictionary, 6th Ed., defines "arbitration" as "A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard."
[3] For instance, if the agreement does not provide a method for picking the arbitrator(s), the court may appoint one or more arbitrators, in accordance with s. 682.04, F.S.
[4] *Roger E. Freilich, D.M.D., P.A. v. Shochet*, 96 So.3d 1135 (Fla. 4th DCA 2012), citing *Roe v. Amica Mut. Ins. Co.*, 533 So.2d 279, 281 (Fla. 1988).
[5] See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).
[6] See *Jackson v. Shakespeare Foundation, Inc.*, 2013 WL 362786 (Fla. 2013).
[7] Section 682.03, F.S.
[8] Section 682.12, F.S.
[9] Section 682.014(3)(f), F.S.

Section 2 provides that the bill is retroactive to July 1, 2013.

Section 3 provides that the bill is effective upon becoming a 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 direct economic 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:

   "A statute is presumed not to have retroactive application, but the presumption is rebuttable by clear evidence that the legislature intended that the statute be applied retroactively."[10] The bill provides that some changes are intended to clarify existing law, are remedial in nature, and apply retroactively, making the legislative intent clear.

   The Florida Constitution guarantees to all persons the right to acquire, possess and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."[11] "In determining whether a statute applies retroactively, we [the Supreme Court of

[10] *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).
[11] Art. I, s. 9, FLA. CONST.

Florida] consider two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional."[12]

The first prong of the test appears to clearly by met by section 2 of the bill, which contains an explicit statement of retroactivity. The second prong looks to see if a vested right is impaired.

A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. To be vested a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.[13]

"Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes"[14]

Thus, a retroactive law of this type should be upheld unless a court finds that a party had a substantive, vested right to a contract provision that allowed for another party to waive an award confirmation.[15]

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

None.

[12] 10A Fla. Jur 2d Constitutional Law §394, citing *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So.2d 1279 (Fla. 2008).
[13] *School Bd. Of Miami-Dade County v. Carralero*, 992 So.2d 353 (Fla. 3d DCA 2008)(internal citations omitted).
[14] *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).
[15] *In re Will of Martell*, 457 So.2d 1064 (Fla. 2d DCA 1984).

A bill to be entitled

An act relating to arbitration; amending s. 682.014, F.S.; correcting the description of a cross-reference; providing for retroactive applicability; providing an effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 682.014, Florida Statutes, is amended to read:

682.014 Effect of agreement to arbitrate; nonwaivable provisions.—

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements in this section or:

(f) The right to confirmation of an award ~~remedies provided~~ under s. 682.12;

Section 2. This act applies retroactively to July 1, 2013.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7163 PCB RORS 14-07 Ratification of Rules/Department of Juvenile Justice
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee; Gaetz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N	Rubottom	Rubottom
1) Judiciary Committee		Westcott	Havlicak

SUMMARY ANALYSIS

The Department of Juvenile Justice has adopted Chapters 63M-2 and 63N-1, implementing a legislative mandate to adopt rules to ensure effective provision of ordinary medical care, mental health services, substance abuse treatment services and services to youth with developmental disabilities.

The Statement of Estimated Regulatory Costs (SERC) showed Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., each impose regulatory costs, exceeding $1 million over the first 5 years the rule is in effect. Accordingly, these rules must be ratified by the Legislature before the may go into effect.

The rules were adopted on February 24, 2014.

The proposed bill authorizes the rules to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

An agency begins the formal rulemaking process by giving notice of the proposed rule.[8] The notice is published by the Department of State in the Florida Administrative Register[9] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[10]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[11] Next is the likely adverse impact on business competitiveness,[12] productivity, or innovation.[13] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[14] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[15] A rule must be filed for adoption before it may go into effect[16] and cannot be filed for adoption until

---

[1] Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17).
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Save the Manatee Club, Inc.,* supra at 599.
[7] *Sloban v. Florida Board of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.54(3)(a)(1), F.S.
[9] Sections 120.54(3)(a)(2) and 120.55(1)(b)(2), F.S.
[10] Section 120.541(2)(a), F.S.
[11] Section 120.541(2)(a)(1), F.S.
[12] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[13] Section 120.541(2)(a)(2), F.S.
[14] Section 120.541(2)(a)(3), F.S.
[15] Section 120.54(3)(e)(6), F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

completion of the rulemaking process.[17] A rule projected to have a specific economic impact exceeding $1 million in the aggregate over 5 years[18] must be ratified by the Legislature before going into effect.[19] As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Health Care Services to Youth Served by the Department of Juvenile Justice

In 2012, the Legislature amended ss. 985.03 and 985.64, F.S., defining "ordinary medical care" and requiring the Department of Juvenile Justice (Department) to adopt rules to ensure effective provision of ordinary medical care, mental health services, substance abuse treatment services and services to youth with developmental disabilities. On February 24, 2014, the Department filed for adoption its rule chapters implementing this mandate. The rules reflect existing policies, practices and procedures of the Department. Therefore, they are not expected to change the procedures used in providing the affected services or change the cost of providing those services. However, the Department's SERC states that the adopted preparation, review and signature requirements for forms do impose transactional costs on affected entities. As a consequence, five of the rules appear to have a regulatory impact exceeding the threshold requiring legislative ratification under s. 120.541, F.S. The SERC for Chapter 63M-2, F.A.C., appears to estimate a total annual impact of $1,396,514.70. The SERC for Chapter 63N-1, F.A.C., appears to estimate a total annual impact of $1,465,423.18.[20]

Impact of Rules

Chapter 63M-2, F.A.C., regulates Health Services in the Medical Division of the Department.

- Rule 63M-2.0052, F.A.C., entitled "Special Consent," sets forth the circumstances in which parental consent and informed consent is and is not required.
- Rule 63M-2.006, F.A.C., entitled "Sick Call," mandates the procedures used in Department facilities to ensure that youth with a medical concern will have access to care.

Chapter 63N-1, F.A.C., regulates Service Delivery with respect to Mental Health/Substance Abuse/Developmental Disability Services.

- Rule 63N-1.0076, F.A.C., entitled "Review and Updating of Individualized Mental Health Treatment Plans, Individualized Substance Abuse Treatment Plans and Integrated Mental Health and Substance Abuse Treatment Plans," regulates the review and updating of the affected plans including the frequency and nature of the review.
- Rule 63N-1.0084, F.A.C., entitled "Documentation of Mental Health and Substance Abuse Treatment Services," regulates the documentation of progress and treatment with respect to such services.
- Rule 63N-1.0085, F.A.C., entitled "Psychiatric Services," regulates the provision of psychiatric services for treatment of serious mental disorders in detention centers and residential commitment programs.

Effect of Proposed Change

The bill ratifies Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., allowing the rules to go into effect.

B. SECTION DIRECTORY:

Section 1: Ratifies Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. Expressly limits ratification

---

[16] Section 120.54(3)(e)(6), F.S.
[17] Section 120.54(3)(e), F.S.
[18] Section 120.541(2)(a), F.S.
[19] Section 120.541(3), F.S.
[20] Copies of the 2 SERCs are included in the Rulemaking Oversight & Repeal Subcommittee meeting materials for March 25, 2014, *available at* http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2727&Session=2014&DocumentType=Meeting Packets&FileName=rors 3-25-14.pdf (Last visited April 1, 2014).

to the effectiveness of the rules. Directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill creates no additional source of state revenues.

2. Expenditures: The bill ratifies rules that impose regulatory costs, but the Department of Juvenile Justice asserts that the costs are already imposed through present manuals and contracts. The Department's SERCs estimate the regulatory impacts of the rules to be (numbers appear to reflect annual costs):

   The SERC for Chapter 63M-2, F.A.C., estimates total impacts of $665,692.23 for detention centers and $730,822.47 for residential commitment programs. The SERC estimates a total impact of $1,396,514.70. These costs include the private sector impacts discussed below.

   The SERC for Chapter 63N-1, F.A.C., estimates impacts of $16,809.00 for each of the 21 detention centers, $12,895.34 for each of the 69 residential commitment programs and $7,951.99 for each of the 28 day treatment programs affected by the rules. The SERC estimates a total impact of $1,465,423.18. These costs include the private sector impacts discussed below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill itself has no impact on local government revenues.

2. Expenditures: The bill does not impose additional expenditures on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department's SERC estimates the rules to have impacts on private sector providers as follows:

There are 11 providers contracted to operate residential commitment programs and 6 providers contracted to operate day treatment programs. In addition, there are 22 providers contracted to provide mental health and substance abuse services or psychiatric services in state operated detention centers and 6 contract providers providing medical services in state operated detention centers.

The SERC for Chapter 63M-2, F.A.C., estimates impacts of $10,591.63 for each of 11 contract providers of residential commitment programs and $31,699.63 for each of 6 contractors providing medical services in state operated detention centers.

The SERC for Chapter 63N-1, F.A.C., estimates impacts of $12,895.34 for each of the 11 contract providers of residential commitment programs and $7,951.99 for each of the 6 contract providers of day treatment programs affected by the rules. In addition, the SERC estimates impacts totaling $148,490.00 for 15 small business providers out of the 22 contractors providing services in the state operated detention centers.

These impacts, however, do not represent new economic impacts because the rules impose substantially the same requirements as Department's current manuals and contracts.

D. FISCAL COMMENTS:

The Department asserts that the rules impose no new impact on its budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to take any 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:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for the agency to exercise its rulemaking authority concerning the verification of trauma centers based on national guidelines. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ratification of rules of the Department of Juvenile Justice; ratifying specified rules relating to the provision of health services to youth in facilities or programs, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any of specified thresholds for likely adverse impact or increase in regulatory costs; providing an effective date.

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

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes:

(a) Rule 63M-2.0052, Florida Administrative Code, entitled "Special Consent," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(b) Rule 63M-2.006, Florida Administrative Code, entitled "Sick Call," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(c) Rule 63N-1.0076, Florida Administrative Code, entitled "Review and Updating of Individualized Mental Health Treatment

Plans, Individualized Substance Abuse Treatment Plans and Integrated Mental Health and Substance Abuse Treatment Plans," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(d) Rule 63N-1.0084, Florida Administrative Code, entitled "Documentation of Mental Health and Substance Abuse Treatment Services," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(e) Rule 63N-1.0085, Florida Administrative Code, entitled "Psychiatric Services," as filed for adoption with the Department of State pursuant to the certification package dated February 24, 2014.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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