Civil Justice & Claims Subcommittee

Thursday, February 16, 2017
9:00 AM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time:	Thursday, February 16, 2017 09:00 am
End Date and Time:	Thursday, February 16, 2017 11:00 am
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 239 Public Records/Protective Injunction Petitions by Lee
HB 377 Limitations on Actions other than for the Recovery of Real Property by Leek
HB 6011 Tobacco Settlement Agreements by Burgess

NOTICE FINALIZED on 02/09/2017 4:18PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 239 Public Records/Protective Injunction Petitions
SPONSOR(S): Lee, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Bond NB	Bond NB
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, and victims of stalking or cyberstalking, may seek an injunction for protection if certain requirements are met.

If a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued after July 1, 2017, this bill provides that such petition and court file is confidential and exempt from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution.

If such an injunction for protection was dismissed prior to July 1, 2017, the petition and court file are confidential and exempt only if the respondent requests.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the Florida Constitution.

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

The effective date of the bill is July 1, 2017.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption for certain court files related to a petition for an injunction against violence; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records, In General

Florida Constitution

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The 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 Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.[1]

Florida Statutes

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[3] However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect 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; or
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

Public Records and Court Proceedings and Files

Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well established common law right of access to court proceedings and records."[6] A court may close a court file or a portion thereof on equitable grounds, but the ability to to do so is limited. The Supreme Court has ruled that "closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine

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[1] FLA. CONST. art. I, s. 24(c).
[2] s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] *Id.*
[5] s. 119.15(3), F.S.
[6] *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988)(ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed."[7]

Public Record Exemptions for Certain Court Records and Files

Currently, s. 119.0714(1), F.S., in relevant part, provides public records exemptions for various types of personal information of contained in court files. Information currently exempt from public records requirements includes records prepared by an agency attorney,[8] various law enforcement confidential records,[9] social security numbers,[10] and bank account numbers.[11]

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence 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.[12] 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. The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.[13]

The petition is immediately presented to a judge, who must review the petition. 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. 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.[14] 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.[15] Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.[16] The hearing on the petition must be set for a date on or before the date when the temporary injunction expires. 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.[17] If the petition is insufficient, the court must dismiss the petition. Importantly, where the petition is dismissed as insufficient, the respondent is not notified of the petition.

If the petition is sufficient, a hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.[18] 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.

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[7] *Id.* at 118.
[8] s. 119.0714(1)(a), F.S.
[9] ss. 119.0714(1)(c) through 119.0714(1)(h), F.S.
[10] s. 119.0714(1)(i), F.S.
[11] s. 119.0714(1)(j), F.S.
[12] s. 741.30(1), F.S.
[13] s. 741.30(3), F.S.
[14] s. 741.30(5), F.S.
[15] s. 741.30(5)(b), F.S.
[16] s. 741.30(5)(c), F.S.
[17] s. 741.30(5)(c), F.S.
[18] s. 741.30(4), F.S.

Alternatively, the court may dismiss the petition at the hearing.

Repeat, Dating, and Sexual Violence
Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The forms of violence are described as follows:

- 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.

- 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. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:
    - A dating relationship must have existed within the past six months;
    - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
    - The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

- Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or 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.

Stalking and Cyberstalking
Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The terms stalking and cyberstalking are not defined in s. 784.0485, F.S.

Effect of the Bill
The bill creates s. 119.0714(1)(k), F.S., to provide that a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, or is dismissed at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued, and the contents of such a petition, after July 1, 2017, are confidential and exempt[19] from s. 119.07(1), F.S., and art. I, s. 24(a) of the Florida Constitution.

[19] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

As to injunctions dismissed prior to July 1, 2017, the bill exempts from public record the petition upon request by the respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. A fee may not be charged for the removal.

The public necessity statement specifies that the existence of such a petition and of the unverified allegations contained in such a petition could be defamatory to an individual and cause unwarranted damage to the reputation of such individual and that correction of the public record by the removal of such a petition is the sole means of protecting the reputation of an individual named in such a petition.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0714, F.S., regarding court files, court records, and official records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2017.

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:

   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 a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on court clerks because staff responsible for complying with public records requests may require training related to the creation of the public records exemption. In addition, clerks 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 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 Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement and Breadth of Exemption

Article I, s. 24(c) of the Florida 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; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for petitions, and the contents thereof, for certain protective injunctions that are dismissed in certain circumstances; requiring the removal of petitions dismissed before, on, or after a specified date from publicly accessible records; 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. Paragraph (k) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that are dismissed without a hearing or at an ex

parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued.

2.a. A petition, and the contents thereof, described in subparagraph 1. that are dismissed on or after July 1, 2017, must be removed from all publicly accessible records upon dismissal.

b. A petition, and the contents thereof, described in subparagraph 1. that are dismissed before July 1, 2017, shall be removed upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such removal.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that are dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of

jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that correction of the public record by the removal of such a petition, and the contents thereof, is the sole means of protecting the reputation of such individual.

Section 3. This act shall take effect July 1, 2017.

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: Civil Justice & Claims Subcommittee

Representative Lee offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (k) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or

cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Article I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Article I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or

cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that removing such a record from public disclosure is the sole means of protecting the reputation of such individual.

Section 3. This act shall take effect July 1, 2017.

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 public records; amending s. 119.0714, F.S.; providing an exemption from public record requirements for petitions, and the contents thereof, for certain protective injunctions that are dismissed in certain circumstances; providing a statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Limitations on Actions other than for the Recovery of Real Property
SPONSOR(S): Leek
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg	Bond
2) Agriculture & Property Rights Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A statute of limitations and a statute of repose both limit the time period with which a person may file a lawsuit. A statute of limitations generally begins when the cause of action accrues and bars the lawsuit from being filed after a set period of time. A statute of repose begins at the occurrence of a specified event and extinguishes the right to file a lawsuit altogether. Where both apply, the action is barred when the first limitations period has run.

Under current law, a cause of action founded on the design or construction of a building is subject to a 4 year statute of limitations and a 10 year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus may limit a cause of action for a latent defect even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete upon final payment. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the last day that the contractor, architect or engineer furnishes labor, services, or materials related to the contract, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The bill provides that a cause of action that would be barred by this change in the definition of the completion of the contract may be commenced within one year after the effective date of the bill.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitations specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.[1]

Moreover, unlike a statute of limitations, a statute of repose abolishes, or completely eliminates, the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.[2] Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.[3]

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, in actions involving a latent defect, the four-year statute of limitations does not being to run until the defect is discovered or should have been discovered with the exercise of due diligence.[4] Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge.[5]

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest.[6] Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

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[1] *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).
[2] *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997)
[3] *See, e.g., Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).
[4] s. 95.11(3)(c), F.S.
[5] *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).
[6] s. 95.11(3)(c), F.S.

Recent Case Law

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion...of the contract' "[7] for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for the purposes of s. 95.11(3)(c), F.S., on the date final payment is made.[8] It reasoned that

> [c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.[9]

The court's definition of completion of the contract subjects the triggering of the statute of repose period to particular actions of the injured party. This differs from the normal operation of a statute of repose, which is usually based on the actions of the injuring party.

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to define the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and statute of limitations for design, planning, or construction defects is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The bill provides that the amendment to s. 95.11(3)(c), F.S., applies to any action commenced on or after July 1, 2017, regardless of when the cause of action accrued. Therefore, a party whose cause of action accrued prior to the changes in this bill, but who commences the action after July 1, 2017, could be barred from bringing the action by the shortening of the statute of repose resulting from the change in the definition of the completion of the contract. The bill provides that in such circumstances, if the action would not have been barred under the court's definition of the completion of the contract, the action may be commenced before July 1, 2018. If the action is not commenced by July 1, 2018, and is barred by the new definition of the completion of the contract, then the action will be forever barred.

The bill also reenacts s. 627.441(2), F.S., for the purposes of incorporating the amendment to s. 95.11(3)(c), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts s. 627.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2017.

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[7] *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706,707 (Fla. 5th DCA 2015).
[8] *Id.* at 708.
[9] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to limitations on actions other than for the recovery of real property; amending s. 95.11, F.S.; specifying the date of completion for specified contracts; providing for applicability; reenacting s. 627.441(2), F.S., relating to commercial general liability policy coverage to contractors for completed operations, to incorporate the amendment made by the act to s. 95.11, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the

professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. The date of completion of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding labor, services, or materials relating to the correction of deficiencies in previously performed work or materials supplied.

Section 2. The amendment made by this act to s. 95.11(3)(c), Florida Statutes, applies to any action commenced on or after July 1, 2017, regardless of when the cause of action accrued, except that any action that would not have been barred on July 1, 2018, under s. 95.11(3)(c), Florida Statutes, before the amendment made by this act may be commenced before July 1,

2018, and if it is not commenced by that date and would be barred by the amendment made by this act to s. 95.11(3)(c), Florida Statutes, it shall be barred.

Section 3. For the purpose of incorporating the amendment made by this act to section 95.11, Florida Statutes, in a reference thereto, subsection (2) of section 627.441, Florida Statutes, is reenacted to read:

627.441 Commercial general liability policies; coverage to contractors for completed operations.—

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(3)(c).

Section 4. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 377 (2017)

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: Civil Justice & Claims Subcommittee

Representative Burgess offered the following:

Amendment

Remove lines 37-53 and insert:

employer, whichever date is latest. Completion of the contract means the latter of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

Section 2. This act applies to causes of action that accrue on or after July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6011 Tobacco Settlement Agreements
SPONSOR(S): Burgess, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MacNamara	Bond
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In civil litigation, a successful party may execute (initiate collection activities) on a judgment entered by the trial court. An appeal does not restrict the right of the successful party to collect the judgment unless the court enters a stay of execution pending the appeal. A stay is automatically granted if the appealing party posts a bond or other surety in an amount equal to the judgment plus two years' interest, except as otherwise provided by law.

In 1997, the state and four large tobacco companies entered into a settlement agreement for all past, present, and future claims by the state. Current law caps the total required amount of all appeal bonds in civil actions filed against one of the four companies by private individuals at $200 million. In addition to the cap on appeal bonds, current law provides procedural rules related to changing or collecting bonds posted by these companies, and imposes reporting requirements on the four tobacco companies and the Supreme Court in connection with these appeals.

Separately, current law provides a means by which a judgment debtor may ask the court for a lower bond, caps the appeal bond at approximately $60 million for a single defendant in a civil action, and caps class action appeal bonds at the lesser of 10% of net worth or $100 million. These laws are not affected by this bill.

This bill repeals the appeal bond limit for appeals by any of the four companies, subjecting these appeals to the Rules of Appellate Procedure, except as otherwise provided by law. The bill also repeals the procedural rules and reporting requirements mandated under current law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Any trial court judgment may be appealed by the unsuccessful party. An appeal does not restrict the right of the successful party to initiate collection unless the trial court enters a stay of execution pending the appeal. Stays of execution are governed by applicable law and by the Florida Rules of Appellate Procedure.[1] In the case of appeals of judgments for the payment of money, a stay of execution is conditioned on the posting of an appeal bond.

Appeal Bonds in General

Rule 9.310(b)(1) of the Florida Rules of Appellate Procedure provides that, if the judgment is solely for the payment of money, a party may obtain an automatic stay by posting a good and sufficient bond (a supersedeas bond) equal to the principal amount of the judgment plus twice the statutory rate of interest.[2] A "supersedeas" is often defined as either a suspension of the power of the trial court to issue an execution on a judgment or decree from which an appeal has been taken or, if execution has issued, a prohibition emanating from the appellate court against further proceedings under the execution.[3]

The supersedeas bond required for an automatic stay of execution may be made in the form of cash, deposited into the registry of the circuit court in the county where the judgment was entered,[4] or may be in the form of a surety bond that is posted with the court. Posting or depositing this security serves to protect the successful party from being adversely affected against the consequences of the supersedeas or stay when a money judgment or decree is appealed. Specifically, if a judgment debtor loses the appeal, the cash or bond deposited or posted with the court is used to satisfy the judgment.

A court clerk is entitled to fees for examining bond certificates issued by surety companies, and also for receiving registry deposits, which would occur if a party deposited cash as their form of security. [5] Court clerks ordinarily have discretion to deposit such cash receipts with their local depository institution, commingled with county funds, unless in a particular case a court enters specific escrow orders.

Exceptions to Bond Requirement

Florida law has several exceptions to the requirement to post an appeal bond pursuant to Rule 9.310:

- Section 45.045(2), F.S., provides that a party seeking a stay of execution may move the court to reduce the amount of supersedeas bond required to obtain such stay on equitable grounds.

- Section 45.045(1), F.S., applies a $50 million bond cap, for each appellant, on all supersedeas bonds required in any civil action brought under any legal theory, regardless of the judgment appealed. This figure is adjusted for inflation, the cap is approximately $59.5 million presently.

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[1] Fla. R. App. P. 9.310(a) to (f).

[2] As of January 1, 2017, the interest rate on judgments, set by the Chief Financial Officer pursuant to s. 55.03, F.S., is 4.97% per annum or 0.01361644% per day. *See* http://www.fldfs.com/aadir/interest.htm. By way of comparison, the interest rate on judgments in 2003, when s. 569.23, F.S. was enacted, was 6% per annum. In 2009, when the statute was amended, the interest rate on judgments was 8% per annum.

[3] The term "supersedeas" though not used in the rule, is often used by the courts to refer to a stay pending review.

[4] *See* Fla. R. App. P. 9.310(c)(1).

[5] *See* s. 28.24(10)(a)(1-2), F.S. (Allowing the clerks of circuit courts to charge of a fee in an amount equal to 3% of the first $500 received plus 1.5% on each subsequent $100 received.). *See also* s. 28.231, F.S. (Granting any state appellate or county or state trail court the power collect fees as the clerk of the circuit court.); s. 28.24(14), F.S. (Provides for a fee of $3.50 for validating certificates or bonds).

- Section 768.733, F.S., dealing with class action lawsuits, sets a cap of the lessor of either the amount of the punitive damages judgment, plus twice the statutory interest rate or 10% of the appellant's net worth to stay execution pending appeals on punitive damages awards. In either instance, the bond required is capped at $100 million.

Tobacco Lawsuits

In 1995, the state sued the "Big Four" tobacco companies (Phillip Morris, R.J. Reynolds, Brown and Williamson, and Lorillard), asserting various claims for monetary damages and injunctive relief.[6] The suit was resolved in 1997 through a settlement agreement, imposing both monetary and non-monetary sanctions on the tobacco companies. Under the terms of the agreement, the state was to receive $12.1 billion over 25 years along with 5.5% of the unadjusted amounts in perpetuity. Subsequent to the state's settlement, the Big Four and some other smaller tobacco producers settled with 46 states,[7] the District of Columbia, the Commonwealth of Puerto Rico and four U.S. territories, referred to as the Master Settlement Agreement ("MSA"). The total unadjusted cost of the state settlements ranges between $212 billion to $246 billion over the first 25 years, subject to numerous adjustments ranging from inflation to fluctuations in cigarette consumption and market share. From FY 2016-2017 through FY 2025-2026, the state estimates it will receive approximately $3.75 billion in tobacco settlement payments under the agreement.[8]

In March of 2003, an Illinois trial court ordered Phillip Morris Inc. to post a $12 billion bond to file an appeal in a class-action tobacco lawsuit.[9] Following the court's ruling, there was speculation that Phillip Morris would not be financially able to post the bond, could default on its $2.6 billion obligation under the MSA,[10] and therefore might seek bankruptcy protection.[11] Phillip Morris filed a Request for Reduction of Bond and Stay of Enforcement of the Judgment, in which a Brief of *Amici Curiae* signed by the chief law enforcement officers of 37 jurisdictions, and by the National Conference of State Legislatures ("NCSL"),[12] was filed urging the court to exercise its discretion to reduce the appeal bond so as not to interfere with the interests of the states in receipt of the settlement payments. The court in *Price* entered an order substantially reducing the appeal bond and no MSA payments were missed.

Engle Progeny Litigation

In 1994, a Florida resident, Howard Engle, filed a national class-action lawsuit against R.J. Reynolds Tobacco Co., and the other "Big Four" tobacco companies. The plaintiff smokers alleged that the tobacco companies had misled consumers about the dangers of their cigarettes. The class was later limited to Florida residents.[13]

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[6] *See State of Fla. et al. v. Am. Tobacco Co., et al.*, Case No. 95-1466 AH (Fla. 15th Cir. Ct.).
[7] Like Florida, the states of Texas, Minnesota and Mississippi also entered into earlier individual settlement agreements.
[8] State of Florida Revenue Estimating Conference for Tobacco Settlement Payments, *Executive Summary* (8/5/2016)
[9] *See Price v. Phillip Morris, Inc.*, Cause No. 00-L-112 (Ill. 3d Cir. Ct. 2003) At issue in this class-action lawsuit was whether the defendant had violated the Illinois Consumer Fraud Act and the Uniform Deceptive Trade Practices Act in its manufacturing, promoting, marketing, distributing and selling Marlboro Lights and Cambridge Lights and allegedly declaring them safer for consumers than "regular" cigarettes. The court found in favor of the plaintiffs and awarded the sum of $7.1005 billion in compensatory damages. In addition, the court ordered the defendant to pay punitive damages in the amount of $3 billion to the State of Illinois. Enforcement could be stayed only if an appeal bond was presented and approved pursuant to Illinois court rule in the amount of $12 billion.
[10] Under the MSA, Phillip Morris' next payment following the judgment was due April 15, 2003.
[11] *See, e.g.*, Associated Press, "Attorneys general ask to lower Phillip Morris bond," BRADENTON HERALD, April 8, 2003; Ameet Sachdev, "Phillip Morris appeals ruling: Seeks to subtract punitive damages of $3 billion," CHICAGO TRIBUNE, April 5, 2003; Editorial, "Legal trouble for tobacco," BOSTON HERALD, April 5, 2003; Sun-Times Springfield Bureau, "Thompson: Cap tobacco bond ; Says $12 bil. appeal cost can hurt state," CHICAGO SUN-TIMES, March 26, 2003.
[12] NCSL is a bipartisan organization that serves the legislators and staff of the legislatures as an advocate for the interests of the states, providing research, technical assistance and information exchange among policymakers on important state issues. In the *amicus* brief, NCSL's interest in the case is stated as "protecting state finances during the most difficult state budget period in fifty years."
[13] *R.J. Reynolds Tobacco Co. v. Engle*, 672 So.2d 39 (Fla. 3d DCA 1996).

In May 2000, a Florida jury found the companies liable for misleading consumers and awarded the plaintiffs $145 billion in damages, one of the largest jury awards ever in the U.S. The tobacco companies appealed and argued that the class of plaintiffs was too diverse and the punitive damage award was excessive. In 2003, the Florida Third District Court of Appeal agreed and reversed the judgment of punitive damages and decertified the class.[14]

On July 6, 2006, the Florida Supreme Court affirmed the reversal of the punitive damages and the decertification of the class, but it allowed former class members to file individual lawsuits.[15] The Florida Supreme Court also permitted the individual plaintiffs, known collectively as the "*Engle* progeny," to rely on the factual findings in the original lawsuit under the legal principal of *res judicata*.[16] As a result, the individual plaintiffs would not have to prove that the tobacco companies misled consumers, but would have to prove that they relied on those misleading representations and were harmed.

Tobacco Lawsuits and Appeals Post-*Engle*

In 2003, s. 569.23, F.S. was enacted,[17] requiring trial courts to automatically stay the execution of judgments entered in favor of class members during the pendency of civil appeals involving any of the four major tobacco companies that entered into the settlement agreement with the state in 2003 following the posting of the required supersedeas bond. The supersedeas bond required to stay the execution of judgment for appeals involving the four tobacco companies was capped at $100 million, collectively.

At the time the Supreme Court decertified the *Engle* class, there was an estimated 7,000 former members of the class who could file individual lawsuits. According to records provided by the Supreme Court, approximately 3,000 individual trial court lawsuits filed by former class members are currently pending.[18]

Current Law on Appeal Bonds of Certain Tobacco Companies

In 2009, s. 569.23, F.S. was amended[19] to extend the application of the statute to include civil actions against the four major tobacco companies brought by persons who are members of the decertified *Engle* class.[20] This amendment increased the supersedeas bond cap to $200 million dollars, collectively, and placed a limit on the amount of each bond in actions filed by members of the decertified class. Specifically, it capped the total cumulative value of all security based upon or equal to the appellant's proportionate share of liability in all cases pending appeal plus twice the statutory rate of interest.[21] The amount of the security (or bond) required is based on the following chart:

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[14] *Liggett Group, Inc. v. Engle*, 853 So.2d 434 (Fla. 3d DCA 2003).
[15] *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), *cert. denied,* 552 U.S. 941 552 U.S. 941, 128 S. Ct. 96, 169 L. Ed. 2d 244 (2007).
[16] "*Res judicata*" refers to the legal concept that once a point in controversy has been legally determined by a court judgment, it cannot be contested again by the parties in the same action or in subsequent proceedings. *See* BLACK'S LAW DICTIONARY, FIFTH EDITION (1979).
[17] Ch. 2003-133, L.O.F. (SB 2826)
[18] *Id.*; *See also* What is the "Engle Progeny" Litigation?, Tobacco Control Legal Consortium, September 2015, available at: publichealthlawcenter.org/sites/default/files/resources/tclc-fs-engle-progeny-2015.pdf
[19] Ch. 2009-188, L.O.F. (SB 2198)
[20] Prior to the decertification, the class action suit would have been covered by the supersedeas bond cap in s. 569.23, F.S. However, the separate lawsuits were not covered by the statute, which meant that the tobacco companies would have had to post supersedeas bonds in accordance with state law and rules of court, in any lawsuit filed by a former member of the class.
[21] s. 569.23(3)(a)2, F.S.

Appeal Bond Caps		
TIER-Number of Judgments	Amount of Security per Judgment	Maximum Total Security
1-40	$5,000,0000	$200,000,000
41-80	$2,500,000	$200,000,000
81-100	$2,000,000	$200,000,000
101-150	$1,333,333	$199,999,950
151-200	$1,000,000	$200,000,000
201-300	$666,667	$200,000,100
301-500	$400,000	$200,000,000
501-1,000	$200,000	$200,000,000
1,001-2,000	$100,000	$200,000,000
2,001-3,000	$66,667	$200,001,000

In a 2011 opinion the First District Court of Appeal determined that s. 569.23(3), F.S., may have a "broader application than the *Engle* progeny cases."[22] In other words, under the current language of the statute, the bond cap may potentially be applied to judgments entered against one of the big four tobacco companies in lawsuits filed by individuals who are not members of the decertified *Engle* class.

In addition to capping the supersedeas bonds in such actions, s. 569.23, F.S. mandates that all security be posted or deposited with the clerk of the Supreme Court. As sole recipient of securities from the tobacco companies, the clerk must collect fees for receipt of security as authorized by law. All fees collected are to be deposited in the State Courts Revenue Trust Fund and the clerk is required to utilize the services of the Chief Financial Officer, as needed, for the custody and management of the security posted or deposited with the clerk.

The statute also provides rules for the payment of judgments following an appeal and procedural requirements for changing the amount of security required. Lastly, the statute imposes several reporting and record retention requirements on the tobacco companies and the Clerk of the Supreme Court with respect to these lawsuits and the amount of security posted or paid.[23] Section 569.23, F.S. was found constitutional in *R.J. Reynolds Tobacco Co., v. Hall*, 67 So. 3d 1084 (Fla. 1st DCA 2011).

Currently there are 40 tobacco appeals pending in the state, totaling approximately $470 million in trial court judgments entered against the tobacco companies. In these cases, the tobacco companies have posted roughly $170 million in bonds. In all, 91 appeals on judgments totaling approximately $950 million have been filed by the tobacco companies since the Supreme Court decertified the *Engle* class in 2006. These companies have posted over $400 million in appeal bonds in connection with these appeals.[24]

Effect of Repeal

This bill repeals the supersedeas bond cap that limits the amount of the supersedeas bond the four major tobacco companies are required to post and requires them to post a bond in accordance with the Florida Rules of Appellate Procedure, except as otherwise provided by law. Furthermore, these bonds will no longer be required to be posted with the clerk of the Supreme Court. Rather, bonds will be posted with or deposited in the registry of the clerk of court in the county where the judgment was entered.

While the remaining number of *Engle* progeny cases is declining, the statute may be applied to cases filed by individuals who were not members of the *Engle* class.[25] Therefore, the total number of cases affected by the repeal is unknown.

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[22] *R.J. Reynolds Tobacco Co. v. Hall*, 67 So.3d 1084, 1092 (Fla. 1st DCA 2011).
[23] s. 569.23(3)(e), F.S.
[24] Data used for calculating total appeal bonds and judgements in such actions was provided by the Supreme Court and may be found on the Court's website. *See* www.floridasupremecourt.org/clerk/bonds.shtml (Last accessed 1/26/17)
[25] *See R.J. Reynolds Tobacco Co. v. Hall,* 67 So.2d at 1092. ("Section 569.23(3)...was specifically intended to apply to the *Engle* litigation and, at the time of the passage, the scope of the statute's application was limited to that litigation. This is

B. SECTION DIRECTORY:

Section 1 repeals s. 569.23, F.S., relating to tobacco settlement agreements.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have an impact on state government expenditures. However, the bill would reduce the workload for the Clerk of the Supreme Court by approximately five hours a month.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on litigants filing suit against a tobacco company as well as the tobacco companies themselves. It appears that this bill may increase costs to tobacco companies for premiums required to post a surety bond, and would correspondingly increase revenues to bonding companies.

D. FISCAL COMMENTS:

Under current law, when an appeal bond is deposited with the clerk of a circuit court in the form of cash, clerks may collect a percentage of the cash deposit as a fee.[27] If, however, a surety bond is posted with the clerk, they are entitled to a flat fee.[28] As such, if any of the four tobacco companies satisfied their appeal bond obligations by depositing cash with a clerk of court, the local government would see an increase in revenue. However, since the amendments to s. 569.23, F.S., none of the tobacco companies have satisfied their appeal bond obligations by depositing cash with the clerk of the Supreme Court; all have done so by posting a surety bond.[29]

Attorney General Pam Bondi has opined that s. 569.23, F.S., "serves a vital, statewide public purpose by protecting a significant stream of income to the state." Specifically, the Attorney General's position is

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clear from the statute's legislative history. However, the statute is not limited to judgments entered in favor of *Engle* plaintiffs; it applies in any civil case against an FSA signatory brought by or on behalf of a member of a decertified class action.") (emphasis added).

[26] Office of the State Court Administrator 2017 Judicial Impact Statement, HB 6011 (January 19, 2017).

[27] *See* s. 28.24(10)(a)(1-2), F.S. (Allowing the clerks of circuit courts to charge of a fee in an amount equal to 3% of the first $500 received plus 1.5% on each subsequent $100 received.)

[28] *See* s. 28.24(14), F.S. (Provides for a fee of $3.50 for validating certificates or bonds) and s. 28.24(19), F.S. (Provides for a fee of $8.50 for approving bonds).

[29] *See* footnote 26.

that the statute prevents the tobacco companies from having to post such large bonds that they may default on their payments to the state.[30]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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 create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[30] *See Amanda Jean Hall, etc. v. R.J. Reynolds Tobacco Company*, Case No.: SC11-1611, "Brief of the State of Florida as Amicus Curiae in Support of Respondent," p.1-4 and appendixes, filed June 1, 2012.

A bill to be entitled

An act relating to tobacco settlement agreements; repealing s. 569.23, F.S., relating to security requirements for the signatories, successors, parents, and affiliates of a specified tobacco settlement agreement; providing an effective date.

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

Section 1. Section 569.23, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2017.